

United States  
Circuit Court of Appeals

For the Ninth Circuit. 13

BOOTH FISHERIES COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
UNITED STATES OF AMERICA,  
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District  
Court of the Territory of Alaska,  
Division Number One.

FILED  
MAR 30 1925  
F. D. MONCKTON



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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BOOTH FISHERIES COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
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Upon Writ of Error to the United States District  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

Hon. A. G. SHOUP, United States Attorney,  
Juneau, Alaska,  
Attorney for Defendant in Error.

H. L. FAULKNER, Esq., Juneau, Alaska,  
Attorney for Plaintiff in Error.

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1749—B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion.

INFORMATION.

Sec. 4 of the Act of Congress Approved June 26,  
1906, as Amended by the Act of June 6, 1924,  
and Regulations Thereunder.

BE IT REMEMBERED that A. G. Shoup,  
United States Attorney for the First Division,  
District of Alaska, who for the United States in  
this behalf prosecutes, in his own proper person  
comes here into the District Court, of said Dis-  
trict and Division, on this — day of October,  
1924, leave of the Court first being had and obtained,  
and for the United States gives the Court here to

understand and be informed, that the Booth Fisheries Company, a corporation, is now and at all times herein mentioned was, duly organized and existing as a corporation doing business in the Territory of Alaska; said Booth Fisheries Company, a corporation, at or near Lucky Cove, indenting the shore of Revillagigedo Island between Thorn Arm and Behm Canal, in the said District of Alaska, and within the jurisdiction of this Court, on the 26th day of July, 1924, continuously to and including the 20th day of August, 1924, in the waters of Revillegigedo Channel, between Thorn Arm and Behm Canal, the same being waters of Alaska over which the United States has jurisdiction and in Division Number One, District of Alaska, and within the jurisdiction of this Court, did then and there unlawfully fish for and take salmon for commercial purposes and not for local food requirements or for use as dog feed, by means of a fish-trap, known as Booth Fisheries Company's Trap, License No. 24-179, within five hundred yards of the mouth of a small unnamed creek, said creek being then and there a stream into which salmon run, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States of America. [1\*]

WHEREUPON said Attorney of the United States, who prosecutes as aforesaid, for the United States, prays the consideration of the Court here in the premises, and that due process of law may be awarded against said Booth Fisheries Com-

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\*Page-number appearing at foot of page of original certified Transcript of Record.

pany, a corporation, in this behalf to make their answer to said United States concerning the premises aforesaid.

A. G. SHOUP,  
United States Attorney.

United States of America,  
Territory of Alaska,—ss.

A. G. Shoup, being first duly sworn, on oath deposes and says: that he is the United States Attorney for the First Division, District of Alaska; that he has read the foregoing information; knows the contents thereof, and believes the same to be true.

A. G. SHOUP.

Subscribed and sworn to before me this 16th day of October, 1924.

[Court Seal] N. B. COOK,  
Deputy Clerk of District Court, District of Alaska,  
Division No. 1.

Filed in the District Court, Territory of Alaska,  
First Division. Oct. 16, 1924. John H. Dunn,  
Clerk. By N. B. Cook, Deputy. [2]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

### INFORMATION.

For Violation of Sec. 3 of the Act of Congress  
Approved June 26, 1906, as Amended by Act  
of June 6, 1924, and Regulations Thereunder.

BE IT REMEMBERED, that A. G. Shoup,  
United States Attorney for the First Division,  
District of Alaska, who for the United States in  
this behalf prosecutes, in his own person comes  
here into the District Court of said Division and  
District, leave of Court being first had and obtained,  
and for the United States gives the Court here to  
understand and be informed that the Booth Fish-  
eries Company, a corporation, is now, and at all  
times herein mentioned was, duly organized and  
existing as a corporation doing business in the  
Territory of Alaska; and that said Booth Fish-  
eries Company, on the 25th day of July, 1924, in  
the First Division, District of Alaska, in waters  
over which the United States has jurisdiction, to  
wit, at or near Lucky Cove, indenting the shore  
of Revillagigedo Island between Thorn Arm and  
Behm Canal, in the Waters of Revillagigedo Chan-

nel, within 500 yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

[3]

#### COUNT TWO.

And said United States Attorney who prosecutes as aforesaid, in the court aforesaid, further gives the Court to understand and be informed that the Booth Fisheries Company, a corporation, is now, and at all times herein mentioned was, duly organized and existing as a corporation doing business in the Territory of Alaska; and that said Booth Fisheries Company, on the 10th day of September, 1924, in the First Division, District of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove indenting the shores of Revillagigedo Island between Thorn Arm and Behm Canal, in the waters of Revillagigedo Channel, within five hundred yards of the mouth of a small unnamed creek emptying into Lucky Cove the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and main-

tain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

### COUNT THREE.

And said United States Attorney, who prosecutes as aforesaid, in the court aforesaid, further gives the Court to understand and be informed that the Booth Fisheries Company, a corporation, is now, and at all times herein mentioned was, duly organized and existing as a corporation doing business in the Territory of Alaska; and that said Booth Fisheries Company, on the 11th day of September, 1924, and continuously to and including the 16th day of September, 1924, in the First Division, District of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove indenting the shores of [4] Revillagigedo Island between Thorn Arm and Behm Canal, in the waters of Revillagigedo Channel, within five hundred yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent

to the spawning grounds in said creek, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE said United States Attorney, who prosecutes as aforesaid, for the United States, prays the consideration of the Court in the premises, and that due process of law may be awarded against said Booth Fisheries Company in this behalf to make their answer to said United States concerning the premises aforesaid.

A. G. SHOUP,  
United States Attorney.

United States of America,  
Territory of Alaska,—ss.

A. G. Shoup, being first duly sworn, on oath deposes and says that he is the United States Attorney for the First Division, District of Alaska; that he has read the foregoing information, knows the contents thereof and believes the same to be true.

A. G. SHOUP.

Subscribed and sworn to before me this 4th day of December, 1924.

[Court Seal] JOHN H. DUNN,  
Clerk of District Court, Dist. of Alaska, Division  
No. 1.

Filed in the District Court, Territory of Alaska,  
First Division. Dec. 4, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [5]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

ORDER CONSOLIDATING FOR TRIAL CASES  
Nos. 1749-B and 1778-B.

And now, to wit, on December 6, 1924, this matter came before the Court upon the motion of A. G. Shoup, United States Attorney, for an order consolidating for trial cases numbers 1749-B and 1778-B, and the law and the premises being by the Court fully understood and considered. IT IS HEREBY ORDERED that said cases 1749-B and 1778-B. pending in this court, be consolidated for trial.

THOS. M. REED,  
District Judge.

Filed in the District Court, Territory of Alaska,  
First Division. Dec. 6, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. One, page 269. [6]



In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

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[7]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1749—B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion.

## INFORMATION.

Sec. 264 C. L. A., as Amended June 6, 1924, and Regulations Thereunder.

BE IT REMEMBERED that A. G. Shoup, United States Attorney, for the First Division, District of Alaska, who for the United States in this behalf prosecutes in his own proper person comes here into the District Court of Said District and Division, on this — day of October, 1924, leave of the Court first being had and obtained, and for the United States gives the Court here to understand and be informed, that the Booth Fisheries Company, a corporation, is now and at all times herein mentioned, was duly organized and existing as a corporation, doing business in the Territory of Alaska; said Booth Fisheries Company, a corporation, at or near Lucky Cove, indenting the mainland shore of Alaska, between Thorn Arm and Behm Canal, in the said District of Alaska, and within the jurisdiction of this Court, on the 26th day of July, 1924, continuously to and including the 20th day of August, 1924, in the waters of Revillagiedo Channel, between Thorn Arm and Behm Canal, the same being waters of Alaska over which the United States has jurisdiction and in Division Number One, District of Alaska and within the jurisdiction of this Court, did then and there unlawfully fish for and take salmon for commercial purposes and not for local food requirements or for use as dog feed, by means of a fish-

trap, known as Booth Fisheries Company's trap, license No. 24-179, within five hundred yards of the mouth of a small unnamed creek, said creek being then and there a stream into which salmon run, [8] contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WHEREUPON said Attorney of the United States, who prosecutes as aforesaid for the United States, prays the consideration of the Court here in the premises, and that due process of law may be awarded against said Booth Fisheries Company, a corporation, in this behalf to make their answer to said United States concerning the premises aforesaid.

A. G. SHOUP,  
United States Attorney.

United States of America,  
Territory of Alaska,—ss.

A. G. Shoup, being first duly sworn, on oath deposes and says: That he is the United States Attorney for the First Division, District of Alaska; that he has read the foregoing information; knows the contents thereof, and believes the same to be true.

A. G. SHOUP.

Subscribed and sworn to before me this 16th day of October, 1924.

[Seal] N. B. COOK,  
Deputy Clerk of District Court, District of Alaska,  
Division No. —.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. October 16, 1924. John H. Dunn, Clerk. By N. B. Cook, Deputy.

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Thereafter, to wit, on December 6, 1924, on motion of United States Attorney A. G. Shoup, dated December 4, 1924, for leave to amend the information theretofore filed in cause No. 1749-B, the Court entered an order granting said motion, which order is, in words and figures, as follows, to wit: [9]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1749-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY.

ORDER GRANTING LEAVE TO AMEND INFORMATION.

And now, to wit, on December 6, 1924, this matter came before the Court upon the motion of A. G. Shoup, United States Attorney, for leave to amend the information heretofore, to wit, on October 16, 1924, filed in the above-entitled court and cause, and the law and the premises by the Court being fully understood and considered, **IT IS HEREBY ORDERED** that said information be amended by interlineation, as follows:

1. By writing after the word "information"

in the caption of said information the words "Sec. 4 of the Act of Congress approved June 26, 1906, as amended by the act of June 6, 1924, and regulations thereunder," in place of the words "Sec. 264, C. L. A., as amended June 6, 1924, and regulations thereunder."

2. By striking out the words "mainland shore of Alaska," in the eleventh line of page one of said information, and writing in place thereof the words, "shore of Revillagigedo Island."

THOS. M. REED,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Dec. 6, 1924. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. One, page 269.

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And thereafter, to wit, on December 6, 1924, on motion of the United States Attorney, A. G. Shoup, made Dec. 4, 1924, the Court entered an order consolidating for trial causes Nos. 1749-B and 1778-B, which order, in words and figures, is as follows, to wit:

In the District Court for the District of Alaska, Division Number One, at Juneau. [10]

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corporation,

Defendant.

ORDER CONSOLIDATING FOR TRIAL  
CASES Nos. 1749-B and 1778-B.

And now, to wit, on December 6, 1924, this matter came before the court upon the motion of A. G. Shoup, United States Attorney, for an order consolidating for trial cases, numbers 1749-B and 1778-B, and the law and the premises being by the Court fully understood and considered, IT IS HEREBY ORDERED that said cases 1749-B and 1778-B, pending in this court, be consolidated for trial.

THOS. M. REED,  
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Dec. 6, 1924. John H. Dunn, Clerk. By W. B. King, Deputy.  
Entered Court Journal No. One, page 269.

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

## INFORMATION.

For Violation of Sec. 3 of the Act of Congress Approved June 26, 1906, as Amended by Act of June 6, 1924, and Regulations Thereunder.

BE IT REMEMBERED, that A. G. Shoup, United States Attorney for the First Division, District of Alaska, who for the United States in this behalf prosecutes, in his own person comes here into the District Court of said Division and District, leave of Court being first had and obtained, and for the United States gives the Court here to understand and be informed that the [11] Booth Fisheries Company, on the 25th day of July, and at all times herein mentioned was, duly organized and existing as a corporation doing business in the Territory of Alaska; and that said Booth Fisheries Company, on the 25th day of July, 1924, in the First Division, District of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove, indenting the shore of Revillagigedo Island, between Thorn Arm and Behm Canal, in the waters of Revillagigedo Channel, within 500 yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawn-



ing grounds in said creek, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

### COUNT TWO.

And said United States Attorney who prosecutes as aforesaid, in the court aforesaid, further gives the Court to understand and be informed that the Booth Fisheries Company, a corporation, is now, and at all times herein mentioned was, duly organized and existing as a corporation, doing business in the Territory of Alaska; and that said Booth Fisheries Company, on the 10th day of September, 1924, in the First Division, District of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove, indenting the shores of Revillagigedo Island between Thorn Arm and Behm Canal, in the waters of Revillagigedo [12] Channel, within five hundred yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

## COUNT THREE.

And said United States Attorney, who prosecutes as aforesaid, in the court aforesaid, further gives the Court to understand and be informed that the Booth Fisheries Company, a corporation, is now, and at all times herein mentioned was, duly organized and existing as a corporation, doing business in the Territory of Alaska; and that said Booth Fisheries Company, on the 11th day of September, 1924, and continuously to and including the 16th day of September, 1924, in the First Division, District of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove, indenting the shores of Revillagigedo Island, between Thorn Arm and Behm Canal, in the waters of Revillagigedo Channel, within five hundred yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding [13] their ascent to the spawning grounds in said creek, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE said United States Attorney, who prosecutes as aforesaid, for the United States, prays the consideration of the Court in the prem-

ises, and that due process of law may be awarded against said Booth Fisheries Company in this behalf to make their answer to said United States concerning the premises aforesaid.

A. G. SHOUP,  
United States Attorney.

United States of America,  
Territory of Alaska,—ss.

A. G. Shoup, being first duly sworn on oath deposes and says that he is the United States Attorney for the First Division, District of Alaska; that he has read the foregoing information, knows the contents thereof and believes the same to be true.

[Seal]

A. G. SHOUP.

Subscribed and sworn to before me this 4th day of December, 1924.

JOHN H. DUNN,  
Clerk of District Court, District of Alaska, Division No. 1.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Dec. 4, 1924.  
\_\_\_\_\_, Clerk. By \_\_\_\_\_, Deputy. [14]

## NAMES AND ADDRESSES OF ATTORNEYS.

H. L. FAULKNER, Juneau, Alaska,  
Attorney for Plaintiff in Error.

A. G. SHOUP, United States Attorney, and  
H. D. STABLER, Special Asst. U. S. Attorney,  
Juneau, Alaska,  
Attorneys for Defendant in Error.

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THE BOOTH FISHERIES CO., a Corporation,  
Defendant.

## BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the ninth day of December, 1924, this cause came on for trial before the above-entitled court and a jury duly impaneled and sworn.

The plaintiff, defendant in error, being represented by A. G. Shoup, United States Attorney, and H. D. Stabler, Special Assistant United States Attorney.

The defendant, plaintiff in error, being represented by its attorney and counsel, H. L. Faulkner.

A jury, having been impaneled, accepted and sworn, opening statement was made to the Court and jury by Mr. H. D. Stabler on behalf of the plaintiff, defendant in error; statement on behalf of the defendant, plaintiff in error, being made by Mr. H. L. Faulkner.

Whereupon the plaintiff, to maintain the issues on its part, introduced the following evidence, to wit: [15]

TESTIMONY OF EDWARD M. BALL, FOR  
PLAINTIFF.

EDWARD M. BALL, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHOUP.)

Q. State your name, please, and your official position.

A. Edward M. Ball, Assistant Agent Alaska Service, Bureau of Fisheries.

Q. How long have you been in your present official position?

A. I have been in this position since April, 1912, and in southeastern Alaska since the summer of 1919.

Q. Are you acquainted with the fish-trap at Lucky Cove, floating trap, territorial license No. 24-179? A. I saw that trap this year.

A. What time did you see that trap?

A. I saw that trap on the 26th of July, 1924.

Q. Now, just where is Lucky Cove situated?

(Testimony of Edward M. Ball.)

A. Lucky Cove is about fifteen miles south of Ketchikan, on the south shore of Revillagigedo Island, between Thorn Arm and Behm Canal.

Q. In the First Division, Territory of Alaska?

A. Yes, sir.

Q. Do you know to whom or to what corporation the territorial license was issued for the operation of that trap?

A. I saw the records in the office of the territorial treasurer and I saw a sign on the trap, showing that this license was issued and held by the Booth Fisheries Company.

Q. What was the sign on the trap, Mr. Ball?

A. Booth Fisheries Company in large letters and the license number—24-179. I think the number of the trap, that is, [16] the company's number of the trap, was also on this board, and the distinctive name—Lucky Cove, Lucky Cove No. 3—I think was also on that sign and probably, in smaller letters was the name of the Northwestern Fisheries Company.

Q. Does the fisheries law require the name of the trap and the operator of each trap to be posted on the trap?

A. It does. A regulation requires that.

Q. There is a regulation? A. Yes.

Q. Do you know whether that is also required by the Bureau of Navigation?

A. I'm not sure whether they have a regulation which requires the number or permit to be displayed on the trap.

(Testimony of Edward M. Ball.)

Q. Just what does your regulation require with respect to the name of the actual owner and operator of the trap being placed on it?

A. That the trap shall carry a sign, in letters of six inches in length, either on a white background or white letters on a black background, showing the name of the owner of the trap, and that it shall be displayed in a conspicuous place on the trap.

Q. Do you know by whom this trap was operated in the year 1924?

A. It was operated by the Booth Fisheries Company for the Quadra cannery.

Q. The Quadra cannery belongs to the Booth Fisheries?

A. It does—name on the cannery; big sign on the front of the cannery, I think—Northwestern Fisheries Company, and, in smaller letters, Booth Fisheries Company, owners.

Q. I call your attention to United States Coast and Geodetic Survey chart No. 8075, being a chart of Revillagigedo Channel, in the Territory of Alaska, and I will ask you to [17] point out to the jury on that chart to which I have called your attention, the location of Lucky Cove and the Lucky Cove trap.

A. The Lucky Cove trap—Well, Lucky Cove is this small indentation right here (pointing). No name on this chart.

Q. In what waters?

A. In the waters of Revillagigedo Channel.

Q. And on what land?

(Testimony of Edward M. Ball.)

A. Revillagigedo Island.

Q. Between what bodies of water?

A. Thorn Arm and Behm Canal.

Q. Now, I will hand you here a chart and ask you to identify that, if you can.     A. Yes, sir.

Q. What does this represent?

A. It represents a drawing that I made of Lucky Cove.

Q. Showing the trap to which I have referred and to which you have testified?     A. Yes, sir.

Q. And the location of it?     A. Yes, sir.

Q. And the stream?     A. Yes, sir.

Q. Is that a correct drawing of Lucky Cove?

A. It is approximately correct. It wasn't made from any survey—just a sketch. It is the best map of Lucky Cove, I know of, however.

Mr. SHOUP.—If the Court please, we'll offer this drawing for the purpose of illustration.

The COURT.—Any objections? [18]

Mr. FAULKNER.—No, sir; I don't think so.

The COURT.—For the purpose of illustration only?

Mr. SHOUP.—Yes, sir.

The COURT.—It may be received.

(Whereupon said drawing was received and marked Plaintiff's Exhibit No. 1 for the purpose of illustration.)

Q. Now, Mr. Ball, I will ask you to point out to the jury the location of the trap.

A. This heavy straight line represents the position of the trap.



(Testimony of Edward M. Ball.)

Q. Now, the position of the stream.

A. This is the stream. This is the shore at high water. This dotted line through here is the water line at mean low tide and that's the stream up there (pointing).

Q. Go ahead.

A. These are islands at high water only and the faint line represents 1500 feet, taken from that point.

Q. How is that?

A. I say, this faint line here represents 1500 feet, or 500 yards from that point (pointing).

Q. Now, "that point," what do you mean by "that point"?

A. Which we have used as the mouth of the stream at mean low water.

Q. On which side of the stream?

A. It's on the—on the north bank.

Q. At mean low tide?      A. At mean low tide.

Q. Have you measured the distance from the trap to the mouth of the stream?

A. I made two measurements from the end of the lead over here to the creek. [19]

Q. At what point on the creek, Mr. Ball?

A. The first measurement was made at about half tide and in coming along the shore, we made an angle about, just about at this point, and our line came across here (pointing); this then being covered with water.

Q. Yes.

A. The distance from this point to the lead—we

(Testimony of Edward M. Ball.)

tied the line to the lead—was twelve hundred and eight feet. That measurement was made on the 26th of July.

Q. Now, where was the point on the stream to which you made your measurements with reference to the tide at that time?

A. It was about midway between the mouth of the creek as it would be at high water, and the mouth at low water.

Q. I don't know whether I asked you, about where was the tide at that time?

A. Oh, it was about half tide. I think the tide was flooding.

Q. Was the tide line at that time the place—

A. (Interposing.) Yes; we measured at the tide line then.

Q. Now, at that particular time, that was the mouth of the stream (pointing)? A. Yes.

Q. Now what is the distance from there to there?

A. Twelve hundred and eight feet.

Q. How did you make that measurement, Mr. Ball?

A. We measured that with a line, a pretty fair-sized line, about the size of a 10-penny nail.

Q. Did you measure it by hand? How long was the line?

A. This line was used in measuring another trap of the Northwestern Fisheries Company, over at Stoney Creek. The line was prepared by the Northwestern Fisheries Company and it [20] had knots supposedly at each hundred-foot point in that

(Testimony of Edward M. Ball.)

line. Well, it was an unsatisfactory measurement, so later on, I think on the next day—

Q. (Interrupting.) Now, what day was it you made the first measurement?

A. Twenty-sixth of July. On the 27th of July, I believe, we laid this line out on a gravel bar at the mouth of a river in Smeaton Bay and measured it with a steel tape. We stretched it to about the same tautness as we had in this case when the measurement was made, and we found it to be 1206 feet long. I had it marked, a point here, by tying a little piece of wood.

Q. Now, what was the actual distance from the head of the lead to the mouth of the stream when you measured it on July 26, subsequently checked?

A. The tape to this point was 1208.

Q. Now, on your chart there, how far was the trap itself; that is, the pot of the trap to the mouth of the stream at mean low tide?

A. How is that question?

Q. I say, what is the distance indicated on the chart there from the mouth of the stream at mean low tide to the trap itself, to the pot?

A. To the pot?

Q. Yes.

A. Well, I haven't attempted to indicate the position of the pot, because—

Q. (Interrupting.) Well, is it more or less than 1500 feet?

A. Well, I wouldn't be sure of that. This may not have extended beyond this line. But no

(Testimony of Edward M. Ball.)

measurement was made to the [21] lead. It wasn't there on the second visit I made.

Q. You testified a while ago that the circular line shown on the chart there represents a distance of 1500 feet from the mouth of the creek?

A. Yes. That was determined by a scale, using a scale of one inch to one hundred feet. This line is 1500 inches from that point.

Q. How much of that lead can you now say positively is within 1500 feet of the mouth of the stream at mean low tide?

A. How much of the lead of the trap?

Q. Yes.

A. I should think all the lead, because it was when it was measured—the permit in the War Department Office shows that this trap has a lead of 600 feet.

Q. Mr. Ball, have you seen the official drawing of the survey on which the War Department permit for this trap was issued? A. Yes; I saw it.

Q. Have you a copy of it?

A. I made a tracing of it. I think I gave it to you.

Q. You made an exact tracing of it? A. Yes.

Q. I'll hand you this tracing and ask you if this is an exact tracing made by you of the War Department survey? A. Yes.

Q. On which the permit for this trap was issued?

A. This is a tracing of a map filed by the Northwestern Fisheries Company and on which the permit was issued.

(Testimony of Edward M. Ball.)

Mr. SHOUP.—We offer it in evidence.

Mr. FAULKNER.—We have no objection.

The COURT.—It may be received and marked.

[22]

(Whereupon a pencil tracing was received in evidence and marked Plaintiff's Exhibit No. 2.)

Q. Now, Mr. Ball, I will ask you if you visited this trap again this year after you made the measurement on the 26th of July?     A. Yes.

Q. What date?     A. November 24, 1924.

Q. Did you make any measurement at that time?

A. I did.

Q. Now, will you kindly indicate again on the map as to where you made your measurements on November 24.

A. On the 24th of November we made a measurement from a point twenty-five feet from a cedar tree which is on the shore at that point and to which the lead of this trap was fastened.

Q. Was the trap in at that time?

A. No. At the time of our first visit we measured it along as straight a line as we could. From that point in July where the lead was, to this point, is 600 feet. From that point (pointing) to this is 378, making a total of 978 feet.

Q. What point on the creek was it that you measured from?

A. From the bank of the stream at low water on the north side.

Q. Now, the distance from the head of the lead of

(Testimony of Edward M. Ball.)

the trap to the mouth of the stream at mean low tide was how far?

A. 978 feet, following the meander of this line. In a direct line it would probably have been a little less.

Q. I will also ask you—

A. (Interrupting.) We also made another measurement—

Q. (Interrupting.) Sir? [23]

A. We also made another measurement.

Q. When was that? A. Last visit.

Q. When was that, Mr. Ball?

A. On the 24th of November. We measured from this point.

Q. What point do you mean by “this point”—for the record? A. High-water mark of the creek.

Q. Yes.

A. Along this direction, to the same point, was 1590 feet.

Q. 1590 feet from the head of the lead on the trap to the mouth of the creek at high water? A. Yes.

Q. Mr. Ball, I will ask you to take a pencil and mark on the chart the point to which you measured at mean low tide when you found it nine hundred and some feet. A. On the bank?

Q. On the bank; yes, sir. Just mark that with the letter A.

(Witness does so.)

Q. Is that the place where salt water meets fresh water at mean low tide?

A. As near as we can determine, that's the point.

(Testimony of Edward M. Ball.)

Q. Now, will you mark with the letter B the point from which you took your measurement on the lead on November 24th. A. Here (pointing).

Q. Now, from B to A is how many feet?

A. 978.

Q. I will ask you to make a line along the course that you measured there between B and A and then mark the distance you found it to be.

(Witness does so.) [24]

Q. Put the date there, please. Now, Mr. Ball, if you will mark with the letter C the point from which you took your measurement at high tide on November 24th on the creek.

A. As near as I can tell, it was about here (indicating).

Q. That is on November 24th? A. Yes.

Q. Was that at high water?

A. No; half tide. This (indicating) was then covered with water.

The COURT.—Well, that was on July 26th, wasn't it?

The WITNESS.—July 26th.

The COURT.—He asked you about November 24th.

Q. On November 24th, at high-tide line.

A. Oh, up here? Yes.

Q. Mark that C.

(Witness does so.)

Q. Now, if you will make a line from B to C, showing the course on which that measurement was taken.

(Testimony of Edward M. Ball.)

A. That is the same as the other. They follow the same line.

Q. Now, mark on the chart the distance between B and C as shown by your measurement on November 24, 1924. A. 1592.

Q. And also mark with the letter D the point on the creek to which you made your measurement on July 26th.

(Witness does so.)

Q. Now, mark—make a line from B to D, showing the distance.

(Witness does so.)

Q. What is the distance? A. 1208.

Q. Now, Mr. Ball, where is the point marked there with reference [25] to the mouth of the creek at mean low tide?

A. What do you wish me to—?

Q. For the sake of the record.

A. It's on the—it's on the water's edge, where fresh water meets salt water, from the north side of the stream.

Q. Well, where is the—

The COURT.—(Interrupting.) At what tide?

Q. At what tide?

A. At mean low tide as near as we could tell when mean low tide was on that date.

Q. Where is the mouth of that stream at mean low tide with reference to your mark, the letter A, there?

A. The mouth of the stream is directly at that point.



(Testimony of Edward M. Ball.)

Q. Where is the mouth of the stream at half tide with reference to the letter D?

A. Approximately at the point where the letter D appears on this sketch.

Q. Where is the mouth of the stream at high water with reference to the letter C?

A. At the point where the stream breaks through the woods, as indicated here by the letter C.

Q. Mr. Ball, do you know the length of that lead?

A. No; I didn't make any measurement of the lead.

Q. What would the length be, as shown by the survey of the War Department, upon which this permit was issued?

A. 600 feet. It says here "Length 600 feet long." That's on their map filed down here in Mr. Skinner's office.

Q. Who was present with you when you made the measurements in July?

A. Mr. O'Malley, the Commissioner of Fisheries, Mr. J. J. [26] Reynolds and Lawrence W. Ragan, who is an employee of ours.

Q. Who was there when you made the measurement on November 24th?

A. I was assisted that day by Captain Hunter, Captain Stensland from one of our boats, and Lawrence Ragan.

Q. Who, if anyone, assisted you in measuring that stream on July 27th?

A. July 27th I wasn't there.

Q. You testified that you stretched the string with

(Testimony of Edward M. Ball.)

which the measurement was made on July 26th, on the beach and measured it with a steel tape.

A. That was with Mr. O'Malley, Reynolds and Ragan.

Q. Mr. Ball, why did you make that contour in your measurements, the meander in your measurement from point C, at the mouth of the creek at mean low tide, instead of measuring straight across?

A. Because there was water there that I couldn't wade. It was too deep and we couldn't stretch this line straight from the lead to the nearest point on the creek.

Q. State whether or not the distance of the measurement would have been any longer or shorter if you had been able to measure it directly across without making that—

A. The distance would have been shorter.

Q. How much?

A. Oh, I should judge from thirty to fifty feet.

Q. The distance as you measured it was 981 feet?

A. 978.

Q. 978.

A. There is a considerable angle in that line.

Q. Have you ever examined that stream with reference to its being a salmon stream? [27]

A. The only time I was on the stream was the 24th of November. We saw no fish that day.

Q. That was the 24th of November? A. Yes.

Q. Were fish running in that locality at that

(Testimony of Edward M. Ball.)

time? A. No; I think not. The run was over.

Q. The run was over.

A. And the water was too high and too much discolored by vegetation for us to see. There were a good many bones of fish on the banks where they had been dragged out by bears and birds.

Q. Bones of what kind of fish?

A. Salmon.

Q. How far up the banks did you go, of the creek?

A. Oh, not more than five, six hundred feet from that high-water mouth.

Q. You did find a good many bones of salmon along the banks? A. Yes.

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Ball, you didn't examine this stream on the 26th of July?

A. Not above the beach.

Q. Did Mr. O'Malley examine it then?

A. I think not.

Q. Did he examine it at any time this summer?

A. No.

Q. You think he didn't?

A. No; he wasn't there but the one time.

Q. Was there any discussion about there being salmon in the [28] creek at that time?

Mr. SHOUP.—We object to that as immaterial.

Mr. FAULKNER.—Well, I'll withdraw the question.

Q. Mr. Ball, after you made that examination

(Testimony of Edward M. Ball.)

on the 26th of July, you went to the cannery, didn't you, of the—

A. (Interrupting.) We stopped that night at Roe Point. The cannery at Roe Point was not operating. We saw Mr. P. H. McCue that same evening.

Q. That's the manager? A. Yes.

Q. And you talked to him about the trap?

A. Yes.

Q. And you told him at that time, either you or Mr. O'Malley, about some trouble that Mr. Paul was trying to make?

Mr. STABLER.—Oh, we object to that as not proper cross-examination.

The COURT.—I'll sustain the objection.

Q. Mr. Ball, did you at that time tell him you measured the distance?

A. I think we did; yes.

Q. Did you make any complaint to him or order him to take his trap out? A. No.

Q. Did you at any time subsequent to that?

Mr. SHOUP.—How is that?

Q. Did you at any time after that?

Mr. SHOUP.—Oh, we object to that as immaterial.

The COURT.—He may answer.

A. No, sir; we did not tell him at any time to remove the trap.

Q. Now, Mr. O'Malley was at the cannery on the ninth of September, wasn't he? [29]

(Testimony of Edward M. Ball.)

A. I know that Mr. O'Malley left Juneau on the eighth of September on a boat for Seattle.

Q. And the boat went in there and stayed several hours loading fish, didn't it?

A. I'm not sure about that.

Q. Now, Mr. Ball, you had come— There has been some little difficulty about determining the mouth of a stream, hasn't there?

A. In some places it has been very hard to determine.

Q. Now, the law now requires, and did require this summer, that the bureau place markers at the mouths of the streams for the purpose of measuring to traps?

Mr. STABLER.—We object to that. Not proper cross-examination, and for the further reason that the law speaks for itself.

The COURT.—He may answer.

Q. Is that so, Mr. Ball?

A. There is a provision in section three of the act of June 6, 1924, which says that the mouth of a stream shall be determined by the Secretary of Commerce and marked in accordance with that determination.

Q. Now, was the mouth of this stream marked at any time? A. Not that I know of.

Q. Hasn't been marked yet. Now, Mr. Ball, you have been with the bureau since 1919.

A. I came down here in summer of 1919.

Q. And you had seen this trap before?

A. No, sir; I was never there before.

(Testimony of Edward M. Ball.)

Q. How is that?

A. I never saw the trap until this year. [30]

Q. Well, you know whether your bureau officials had inspected that trap? A. Well—

Mr. SHOUP.—(Interrupting.) We object to that as immaterial.

Mr. FAULKNER.—We withdraw the question. The COURT.—Objection overruled.

A. Yes; the trap was examined several times in 1923.

Q. Now was the distance measured before by the bureau?

A. I think Mr. Stensland made one measurement in 1923.

Q. Did you know the result?

A. At high water.

Q. Do you know the result of that?

A. 1506 feet, I think he told me.

Q. 1506 feet. A. Yes.

Mr. FAULKNER.—That's all.

Redirect Examination.

(By Mr. SHOUP.)

Q. Do you know whether or not any other measurements were taken by any other officers of the bureau previous to 1924?

A. No; only the one I just mentioned by Mr. Stensland. I know there was some estimates of the distance.

Q. Did you have any report from any of your officers prior to 1924 that it was too close to the creek? A. Yes.

(Testimony of Edward M. Ball.)

Q. Who was that by?

A. Reported by H. H. Hungerford.

Q. When? A. In September, 1923.

Q. Who is H. H. Hungerford? [31]

A. He was a warden in our service.

Q. What did he report?

A. He reported that the trap—

Mr. FAULKNER.—(Interrupting.) If the Court please, I think that this is not the best evidence, and I'll object to it on that ground.

Mr. SHOUP.—Well, counsel brought that subject up himself.

Mr. FAULKNER.—Well, I just asked him if he ever made any measurements before.

The COURT.—Yes; he simply asked him if there were any measurements made of the trap before. Objection sustained.

Q. Were there any measurements reported at low water from the mouth of this creek at mean low tide in 1923? A. None.

Q. And the measurement at high water, reported—

A. (Interposing.) Was 1506, following the meander of the shore.

Q. Following the meander line of the shore?

A. Uh-huh.

Q. Mr. Ball, Mr. Faulkner asked you about the provisions of the law with relation to markers at the mouths of streams. You testified, I believe, that there is a provision in section 3 of that law?

A. Yes.

(Testimony of Edward M. Ball.)

Q. Is there any provision relating to markers in section 4 of the law?     A. None.

Q. To what does section 4 relate?

A. Relates to the taking and fishing for salmon within 500 yards of the mouth of any stream, by any means. [32]

Mr. SHOUP.—That's all.

Recross-examination.

(By Mr. FAULKNER.)

Mr. FAULKNER.—There is one other question I wanted to ask Mr. Ball on cross-examination.

Q. Mr. Ball, you say the license for this trap was issued to the Booth Fisheries Company. Now, did you get the date?

A. No; I couldn't tell you the date.

Mr. FAULKNER.—That's all.

## TESTIMONY OF OLE KERR, FOR PLAINTIFF.

OLE KERR, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. What is your name?     A. Ole Kerr.

Q. Where do you live, Mr. Kerr?

A. Ketchikan.

Q. What are you doing in Ketchikan?

A. Fishing.

Q. How long have you been fishing in Ketchikan?

A. Around 14 years.



(Testimony of Ole Kerr.)

Q. Where have you been working the last four or five years? A. Smiley's cannery.

Q. At Ketchikan? A. Yes.

Q. Where were you working in 1918?

A. For the Northwestern Fisheries.

Q. Where? [33] A. Quadra.

Q. What were you doing?

A. Watching a trap.

Q. What trap? A. Lucky Cove.

Q. Where is that trap which you watched in the year 1918? A. It's in Lucky Cove.

Q. Will you step over here to this map and point out for us where you watched the trap in 1918?

A. Yes, sir.

Q. Now, point out on this Coast and Geoditic Survey Chart No. 8075 of Revillagigedo Channel and Revillagigedo Island and point out the position of that trap that you watched in 1918. This the Revillagigedo Island.

A. Where is that Lucky Cove?

Mr. FAULKNER.—Well, just a minute. Let him point it out.

The WITNESS.—I can't do it until I find out where this—

Q. Point out Lucky Cove.

A. Here (pointing).

Q. Now, where was the trap in 1918 that you were watching?

A. Right there (pointing).

Q. At Lucky Cove? A. Yes.

(Testimony of Ole Kerr.)

Q. Do you know where the creek is in Lucky Cove? A. Yes.

Q. How far was it from your trap, about?

A. I never measured it.

Q. Well, give us an idea of what it was.

A. Oh, around a thousand, twelve hundred feet.

Q. Any other stream close by your trap, emptying into Lucky Cove? [34]

A. Not that I know of.

Q. Now, did you ever go up this stream?

A. Yes.

Q. How far?

A. Oh, just about a hundred feet or two.

Q. What year? A. 1918.

Q. What did you see there when you went up there, up that stream with relation to salmon fish? A. I seen a few fish up there; that's all.

Q. How many, about, did you see?

A. Oh, I don't know—a hundred or two; three, maybe.

Q. How far above high-tide line up that creek did you see salmon fish?

A. Oh, around a hundred feet.

Q. Did you ever go up any farther than a hundred feet? A. No, sir.

Q. Now, what month was this in 1918?

A. In August.

Q. You saw salmon fish that stream in August of 1918? A. Yes, sir.

Q. How many fish?

(Testimony of Ole Kerr.)

A. Oh; I don't know; about a couple of hundred, 300, maybe.

Q. A hundred feet above the high-tide line?

A. Yes.

Q. And you didn't go up any farther?

A. No; I never was up any further.

Q. Is that a salmon stream, Mr. Kerr?

A. I think it is. [35]

Cross-examination.

(By Mr. FAULKNER.)

Q. Did you ever tell anybody about this before?

A. Did I what, sir?

Q. Did you ever tell anybody about this before?

A. I told somebody this morning.

The COURT.—About what?

Mr. FAULKNER.—About salmon being in the stream.

The WITNESS.—No; I never did.

Q. You never told anybody? A. No.

Q. Now, that was in 1918? A. Yes.

Q. And you were working for the Northwestern Fisheries then? A. I was; yes.

Q. How long did you work for them?

A. I worked that season for them; that year.

Q. You operated that trap? A. Yes.

Q. You were watchman on that trap? A. Yes.

Q. Just that one season? A. Yes.

Q. Did you have any trouble with them when the season was over? A. No.

Q. Why didn't you go back to work for them?

(Testimony of Ole Kerr.)

A. Well, that's a funny thing to ask a man. I got a right to go wherever I want to.

Q. But you didn't have any trouble with them?

A. No. [36]

Q. Who was the manager there that year?

A. McCue.

Q. Mr. McCue? A. Yes.

Q. He was the manager of the cannery there?

A. Yes; he's the head man for it.

Q. Who was the manager of the cannery? Who was operating the cannery, superintendent of the cannery?

A. Oscar Olson, I think his name was.

Q. Oscar Olson? A. Yes.

Q. Now, you say that trap was about a thousand or twelve hundred feet from the stream?

A. Yes.

Q. That year.

A. Well, I don't know. It may be a little more; it may be a little less.

Q. You didn't measure it? A. No.

Q. And you were watchman there? A. Yes.

Q. Did you know that you were committing a crime by fishing within 1500 feet of the stream?

A. No; I didn't.

Q. Didn't know that? A. No.

Q. You didn't tell anybody anything about it?

A. No.

Q. How did you come to tell about it now, Mr. Kerr?

(Testimony of Ole Kerr.)

A. Because I was asked in Ketchikan; the fish commissioner asked me. [37]

Q. The fish commissioner asked you. Do you know how he came to ask you? A. What?

Q. Do you know how he came to ask you?

Mr. STABLER.—I object to that.

The COURT.—Yes; it is immaterial.

Mr. FAULKNER.—I'll withdraw that.

Q. Do you know William Paul in Ketchikan?

A. No.

Q. Didn't he talk to you about this case?

Mr. STABLER.—We object to that as irrelevant and immaterial and not proper cross-examination.

The COURT.—He may answer.

Q. You know William Paul of Ketchikan?

A. No.

Q. Now, what did you do this year, Mr. Kerr?

A. I was working at Smiley's cannery.

Q. What did you do there?

A. Watching a trap.

Q. Where? A. Out at Bostwick Inlet.

Q. Now, when you saw the fish in the stream down there in August, 1918, what time of the year was that, the latter part of August or the first part of August?

A. Oh, around the first part of August, I guess.

Q. What kind of fish were they? A. Humps.

Q. What's that? A. Humpies.

Q. You are quite sure of that? [38]

A. Sir?

(Testimony of Ole Kerr.)

Q. You are quite sure of that, are you?

A. Yes.

Q. How high was the stream then?

A. How high?

Q. Yes. A. What do you mean, high water?

A. No; the stream itself?

A. It's pretty hard for me to explain all these things. This is five years ago.

Q. You don't remember very accurately?

A. What is that?

Q. You don't remember very accurately?

A. No.

Q. Now, where were these salmon that you saw? Were they in the tide water that backed up in there or were they in the stream itself?

A. They were in the creek.

Q. In the fresh water? A. Yes.

Q. How deep was the water in the creek?

A. There is never much water in that creek.

Q. What's that?

A. There is never very much water in that creek.

Q. As a matter of fact, a good portion of the time, it's dry, isn't it?

A. Yes; I guess it will go dry at times.

Mr. FAULKNER.—That's all.

Recess until 2 o'clock P. M. [39]

Tuesday, December 9, 1924.

Court met pursuant to recess at 2 P. M.

TESTIMONY OF EDWARD M. BALL, FOR  
PLAINTIFF (RECALLED).

EDWARD M. BALL, recalled as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Redirect Examination.

(By Mr. SHOUP.)

Q. Mr. Ball, did your bureau or any officer of your bureau, at any time receive any communication from William L. Paul, regarding this trap in proximity to this creek? A. No, sir.

Q. Have markers been put on any of the streams in southeastern Alaska under the present law?

Mr. FAULKNER.—Well, if the Court please, I object to that as incompetent, irrelevant and immaterial.

The COURT.—Yes; objection sustained.

Recross-examination.

(By Mr. FAULKNER.)

Q. Mr. Ball, were you present during the conversation between Mr. O'Malley and Mr. P. H. McCue at Roe Point on July 27th? A. Yes, sir.

Q. Regarding this trap? A. Yes.

Q. At that time did Mr. O'Malley tell Mr. McCue that Mr. Paul was trying to stir up trouble for him over this trap?

A. I'm not sure whether he said so about Lucky

(Testimony of Edward M. Ball.)

Cove. There was a trap belonging to this company, however, that Mr. Paul complained about.

Mr. FAULKNER.—That's all.

Redirect Examination.

(By Mr. SHOUP.) [40]

Q. Is that another trap than the trap here?

A. Yes.

Q. Has there been any prosecution started against this company on account of the other trap? A. No, sir.

Recross-examination.

(By Mr. FAULKNER.)

Q. You are not sure about this trap?

A. I'm not sure what Mr. O'Malley said. He may have had something to say about Lucky Cove, and that Mr. Paul was complaining about traps belonging to this company.

Mr. FAULKNER.—That's all.

Redirect Examination.

(By Mr. SHOUP.)

Q. Are you sure that Mr. Paul never filed a complaint regarding this trap? A. I am.

Mr. SHOUP.—That's all.

TESTIMONY OF JOHN OLSON, FOR PLAINTIFF.

JOHN OLSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:



(Testimony of John Olson.)

Direct Examination.

(By Mr. STABLER.)

Q. What is your name?     A. John Olson.

Q. Where do you live, Mr. Olson?

A. Ketchikan.

Q. What is your occupation?

A. Fisherman. [41]

Q. Now, I will ask you if you are familiar with what is known as Lucky Cove on Revillagigedo Island in southeastern Alaska?     A. Yes.

Q. I'll ask you if you were over there in the year 1923?     A. Yes.

Q. What were you doing over there in 1923?

A. I was looking after a trap for the Fidalgo Island Packing Company.

Q. What was your position?

A. Watching the trap.

Q. Where was that trap with reference to Lucky Cove?

A. That is just about a mile, little better than a mile south of Lucky Cove.

Q. Where was it with reference to Booth Fisheries trap No. 3?     A. I can't hear you.

Q. Where was your trap with reference to Booth Fisheries trap No. 3?

A. Well, that's a matter of a mile, at the point south of Booth Fisheries trap, just around the point.

Q. And Booth Fisheries trap would be between your trap and Lucky Cove?

A. Booth Fisheries trap is right in Lucky Cove.

(Testimony of John Olson.)

Q. Yes. Now, then, what time of the year were you working there as trap watchman in 1923?

A. I came there the 13th of June and I left there the 28th of August.

Q. Are you familiar with the site of the creek emptying into Lucky Cove?

A. Pretty well familiar with it; yes.

Q. Were you up that creek during the months of June, July and [42] August of 1923?

A. I was mostly up there in July; mostly up there every day.

Q. How about August, 1923.

A. Well, I wasn't up there very many times in August. A few times I was up there.

Q. How about the month of June?

A. Well, June I was up there; let's see—it was the latter part of June.

Q. Now, did you go up that creek above the high-tide line?

A. I did went up there, yes, a few times.

Q. Did you see any fish up there?

A. I saw quite a few fish up there.

Q. What kind of fish?

A. Humpback and a few dogs, and out in the bay I saw a very few sockeyes, very few.

Q. All salmon? A. All salmon; yes.

Q. Now, what months of 1923 did you see fish in this creek? A. In July.

Q. Above high-tide line?

A. In July; latter part of July.

Q. How far up did you go above high-tide line?

(Testimony of John Olson.)

A. Oh, I went up about a couple of hundred feet.

Q. How far?

The COURT.—Couple of hundred feet.

Q. And you saw fish up there that far?

A. I saw fish up there; yes.

Q. May there have been fish up there farther than you went up?

Mr. FAULKNER.—Just a minute. I object to that as calling for a conclusion of the witness.

[43]

Mr. STABLER.—Well, we think he ought to be permitted to testify to that as far as he knows, from what he saw and could see going up there.

The COURT.—You asked him, “May there have been fish farther up?” I think the question is objectionable. The question is what he saw.

Mr. STABLER.—All right. We’ll withdraw it.

Q. Did you see any fish in this stream during the month of August, 1923?

A. I wasn’t up the stream at that time.

Q. Is this a salmon stream, this stream emptying into Lucky Cove?

A. That’s a salmon stream as far as I can figure it.

Q. Are you familiar with the site of Booth Fisheries Floating trap No. 3 at Lucky Cove?

A. Well, that’s the same trap, isn’t it?

Q. Yes, sir. A. Yes.

Q. Did you see that trap in the year 1924?

A. I seen it; yes.

(Testimony of John Olson.)

Q. When?

A. Passing—I couldn't say exactly when, but I seen it passing there, going up and down the coast.

Q. What months?

A. In July and the first part of August.

Q. Did you see it in June of this year?

A. I saw it in June this year; yes.

Q. Was that trap fishing in June?

A. She was fishing in June when I passed it.

Q. Sir? [44]

A. She was fishing the latter part of June.

Q. Was it fishing in July of 1924?

A. She was fishing then.

Q. Was she fishing in August, 1924?

A. Well, now, I couldn't say, in August, whether she was fishing in August or not.

Q. How big is this stream?

A. Oh, that's a good-sized stream. When it's raining a little she's way higher than usually, but in dry weather there's plenty of water enough for fish to go up. It isn't dry. Fish will go up anyway.

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Olson, the trap was fishing in June of this year? A. Yes, sir.

Q. And July of this year? A. Yes.

Q. You are quite sure of that?

A. She was fishing; yes.

Q. Now, you're a fisherman, are you?

A. Yes.

(Testimony of John Olson.)

Q. Seine fisherman? A. Seine fisherman.

Q. Did you ever fish down in Lucky Cove?

A. No.

Q. What is that? A. No.

Q. Never fished in there? A. No. [45]

Q. Now, you saw sockeyes in there?

A. No—I saw sockeyes there, yes; but I never fished out there.

Q. What's that?

A. I didn't fish there, but I saw sockeyes there.

Q. What were the fish you saw in the creek?

A. Humpback and dogs.

Q. What time of the year was that?

A. That was in July.

Q. In 1923? A. Yes.

Q. Now, the trap was there then?

A. The trap was there then.

Q. Fishing? A. Yes.

Q. And you didn't complain to anybody about that? A. No; I had no occasion to complain.

Q. You knew that was a salmon stream then?

A. I knew it was a salmon stream; yes.

Q. Now, Mr. Olson, were you ever employed by the Northwestern Fisheries Co.? A. No.

Q. The Booth Fisheries? A. No.

Q. You don't like them very well, do you?

Mr. STABLER.—Oh, we object to that. That's not a material matter in this case.

A. Any man is just as good to me as another so long as I do the right thing to them and they do the right thing by me. [46]

(Testimony of John Olson.)

Q. You know Mr. Thue, Iver Thue? A. No.

Q. You don't? A. No.

Q. Did you have a conversation with a man up here in the hall this morning, named Iver Thue?

A. I spoke with a man, yes; but I don't know his name.

Q. Did you, out in the hall of the courthouse, this morning, tell Mr. Thue—

Mr. STABLER.—Now, just a moment. We object to that for several reasons. In the first place, he hasn't identified this man with Mr. Thue, and I assume that he is trying to impeach the witness, and, if so, we want to know who all was present.

Mr. FAULKNER.—Nobody else present.

The COURT.—You may form your question.

Q. In a conversation with Mr. Thue, didn't you tell Mr. Thue out here in the hall this morning that you hoped the Booth Fisheries Company would get it in the neck in this case?

A. I did not.

Q. You're quite sure of that?

A. Yes; I'm quite sure of that.

Q. What is the name of your boat?

A. "Leona."

Q. "Leona"? A. Yes.

Q. You never fished down there? A. What?

Q. You never fished down there in Lucky Cove?

A. No. [47]

Q. You know Mr. Paul, in Ketchikan?

(Testimony of John Olson.)

A. I. don't. I heard of him, but I don't know the man if I seen him on the street.

Q. You don't know him? A. No.

Mr. FAULKNER.—That's all.

TESTIMONY OF IVER THUE, FOR PLAINTIFF.

IVER THUE, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. What is your name? A. Iver Thue.

Q. Where do you live? A. Ketchikan.

Q. What is your occupation? A. Laborer.

Q. What kind of laboring do you do?

A. Fixing up trap gear and hanging traps, and such as that.

Q. For what company do you hang trap gear?

A. Northwestern Fisheries.

Q. How is that?

The COURT.—Northwestern Fisheries.

Q. Where is their cannery? A. Quadra.

Q. What years were you employed by this cannery as outside foreman?

A. 1920 and this year, 1924.

Q. Are you familiar with the site of the Booth Fisheries trap No. 3 at Lucky Cove? [48]

A. Yes.

Q. Did you have anything to do with putting that trap there? A. Yes.

(Testimony of Iver Thue.)

Q. This year? A. Yes.

Q. When was that trap put in that position, Mr. Thue?

A. As near as I can remember, it was the latter part of June or the first of July; somewheres around there. I never kept any record, but that's as near as I can remember.

Q. 1924? A. Yes.

Q. And you put it in there? A. Yes.

Q. When was that trap first put into fishing condition in 1924?

A. I don't remember just what day, but as near as I can remember, the last part of June or the first part of July; somewheres around there as near as I can remember.

Q. Now, can you say that it was fishing on July first?

A. Not for sure. Maybe it was, but I wouldn't say for sure.

Q. Now, I will ask you if the trap was in a fishing condition on the 26th day of July, 1924?

A. 26th of July?

Q. Yes, sir. A. Yes.

Q. It was fishing then? A. Yes.

Q. How long did that trap remain there after July 26th, 1924, and continue to fish?

A. Till August 19th. [49]

Q. 1924? A. Yes.

Q. Then what happened with reference to the trap? A. We cut the gear off.



(Testimony of Iver Thue.)

Q. Did any—did you do anything else besides cut the gear off? A. No.

Q. Is the trap still there? A. Yes.

Q. Now, was the trap fishing on the 24th of July, 1924? A. Yes.

Q. How long prior to the 24th of July, 1924, would you say that the trap had been fishing?

A. She was not in fishing condition from the 12th, or about the 12th, to the 22d.

Q. Why not?

A. There was big holes in the lead, all the way from twenty feet to forty feet.

Q. From the 12th of July until the 22d of July?

A. Yes, sir.

Q. But outside of those days the trap fished from the first of July, as near as you know, until the end of the close season on the 19th day of August, is that correct? A. Yes.

Q. Now, during those days that the trap had a hole in the lead, was there not some fish getting into the trap?

Mr. FAULKNER.—What was that? I didn't understand the question.

The COURT.—He asked him if on the days there were holes in the lead, some fish were not getting into the trap.

Q. But the trap was not fishing to capacity by reason of these [50] holes in the lead?

A. Yes.

Q. That is what you mean, is it not? A. Yes.

Q. But it was fishing, was it not?

(Testimony of Iver Thue.)

A. It was fishing; yes.

Q. Now, did that trap fish there during any other year besides 1924, to your knowledge? A. Yes.

Q. What year? A. 1922.

Q. What was its location? Was it in the same position in 1922 that it was in in 1924?

A. Yes, sir.

Q. Do you know how many fish this trap caught during the year 1924? A. No, sir.

Q. Did you have anything to do with lifting the spiller on that trap as outside foreman?

A. Once in a while I would be there and help to lift.

Q. Did you take any fish out of that spiller during 1924? A. Yes.

Q. How many

A. Oh, one time 4,000, and the other times I don't remember. 4,000, that was the most.

Q. Did you do all the lifting for the Quadra cannery during the year 1924? A. No.

Q. But you do know of one occasion when 4,000 fish were taken out of that trap? [51] A. Yes.

Q. This year? A. Yes.

Q. And on other occasions when lesser numbers of fish were taken out of that trap? A. Yes.

Q. This year. Now, about the 15th of September, 1924, did you have occasion to go into Lucky Cove and up the creek with Mr. Stensland and Mr. Suelmala? A. Yes, sir.

Q. Warden of the Bureau of Fisheries?

A. Yes, sir.

(Testimony of Iver Thue.)

Q. What was the occasion for your going up there at that time?

A. The superintendent was sick and couldn't go, so he asked me to take his place.

Q. What was the occasion for your going up this creek at that time?     A. I don't know.

Q. In other words, what did you go up that creek for?

A. I don't know what I went there for. I was asked to go there. That was all that—

Q. What did you do when you went up there?

A. We dug around between the rocks and looked for eggs.

Q. Did you find any eggs?     A. Yes.

Q. What kind of eggs?

A. Salmon eggs, it looked to me.

Q. Well, do you know salmon eggs when you see them?

A. Well, they were mixed up with some other fish eggs, maybe. I couldn't tell them apart. [52]

Q. Did you find any salmon eggs there?

A. Yes.

Q. Did you see any salmon in there at that time; that is, on the 15th day of September, 1924?

A. Yes.

Q. How many?

A. Well, about between two and three hundred—300, I should judge.

Q. What kind of salmon?

A. Humpies and dogs.

(Testimony of Iver Thue.)

Q. What was the approximate number of salmon there that were humpies?

A. The majority were humpies; about one-third was dogs; about that.

Q. About one-third dogs and two-thirds humpies, is that correct? A. Yes.

Q. Salmon? A. Yes.

Q. How far up this creek did you go above high-tide line?

A. I don't know just how far up the tide goes. The tide backs up the creek a ways, but I don't know just how far.

Q. Well, with reference to the high-tide line on the beach, how far up did you go above that?

A. Seven or eight hundred feet; about 800 feet, I should judge.

Q. Did you see salmon all the way up those seven or eight hundred feet? A. Yes.

Q. Were they spawning? A. Were they what?

Q. Were these salmon spawning?

A. No; I didn't see them spawn. [53]

Q. But you did find salmon spawn there?

A. Found eggs there; fish eggs.

Q. The creek that you are testifying about is the creek emptying into Lucky Cove, near the Booth Fisheries trap No. 2? A. Yes.

Q. Is that right? A. Yes.

Q. On Revillagigedo Island, southern shore?

A. Yes.

Q. You're still working for the Booth Fisheries Company, are you? A. Yes.

(Testimony of Iver Thue.)

Q. Who is the superintendent of the cannery?

A. McCue.

Q. Your immediate employer? A. McCue.

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Thue, you say that this gear was taken off this trap on the 19th of August? A. Yes.

Q. What was done with the trap then?

A. She was left there for a couple of days or so till we got a boat and towed it away.

Q. Now, when you told Mr. Stabler that the trap was still there, is that correct?

A. I must have misunderstood him.

Q. What's that?

A. Then I must have misunderstood him.

Q. Now, you don't mean that the trap is still in the same position? [54] A. No, sir.

Q. Where is it now?

A. It's at the head of Quadra Bay.

Q. Now, as a matter of fact— Put away for the winter, wasn't it? A. Yes.

Q. As a matter of fact it was taken away from there on the 20th of August, wasn't it?

A. Either that or the 21st; I don't remember.

Q. Now, you went up the stream with Mr. Stensland on the 15th of September? A. Yes.

Q. How long was that after the fishing season was over? I might ask you another question and withdraw that. After the fishing season was closed on the 19th of August, did you do any more fishing for that cannery?

(Testimony of Iver Thue.)

A. Yes; the other traps was fishing.

Q. What's that?

A. No; we didn't fish after the 20th.

Q. You closed down on the 20th? A. Yes.

Q. Now, you went up the stream with Mr. Stensland then, on the 15th of September? A. Yes.

Q. That would be 26 days after you closed?

A. Something like that.

Q. And you found some fish up there, you said, I think, between two and three hundred?

A. Yes. [55]

Q. Part of them were humpies and part of them dogs? A. Yes.

Q. And you also saw some eggs. Now, where were those eggs?

A. Between the rocks or under the rocks.

Q. What was the condition of the eggs?

A. Most of them was spoiled. They all was kind of spoiled; turned white.

Q. How were they spoiled?

A. They turned white; they were spoiled.

Q. Well, had they been in the water or had they been exposed to the air?

Mr. STABLER.—Well, now, we think that's going pretty far unless he testifies to some facts showing that he is qualified to answer.

The COURT.—Well, he may answer.

Mr. STABLER.—Pretty much of a conclusion, we think.

The COURT.—He can ask him how they were spoiled.

(Testimony of Iver Thue.)

Q. How were they spoiled, if you know?

A. They were dry.

Q. Dry?     A. Yes.

Q. Now, what was the condition of the creek at that time with reference to water? Was there much water in it?

A. Well, in places it was a foot and a half to two or three feet in deep places, and in a lot of places it was dry.

Q. Dry?     A. Yes.

Q. How far up the creek did you go that day?

A. Around 800 feet, I should judge.

Q. Had you ever been up that creek before? [56]

A. No, sir.

Q. What is the condition of the creek? Is it a sandy bottom or a rocky bottom?     A. Rocky.

Q. Mr Thue, how much experience have you had in hanging fish-traps? How many years?

A. About eleven or twelve years.

Q. And you say that you were in the employ of this company in 1922 and 1924, and, did you say 1920?     A. Yes.

Q. That's three years?     A. Yes, sir.

Q. And you had only been up the stream once?

A. Yes.

Q. Now, did you know the position of that trap during those three years?

Mr. SHOUP.—We object to that as not proper cross-examination.

Mr. FAULKNER.—I think it is. I think they asked him if that trap was there in 1922. I may

(Testimony of Iver Thue.)

be mistaken, but I think that Mr. Stabler asked him that question.

The COURT.—I think he did. You may ask him.

Q. Was the trap in the same place in 1922 that it was in 1924? A. Yes, sir.

Q. Was it in the same place in 1920?

A. I don't know. I didn't see the trap there.

Q. Oh, you didn't see the trap. Well, now, how do you know that it was in the same place in 1922 that it was in 1924? A. Yes, sir.

Q. I say, you know that? [57] A. Yes, sir.

Mr. FAULKNER.—I think that's all.

#### TESTIMONY OF IVER N. STENSLAND, FOR PLAINTIFF.

IVER N. STENSLAND, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

##### Direct Examination.

(By Mr. STABLER.)

Q. What is your name? A. Iver N. Stensland.

Q. What is your position, Mr. Stensland?

A. I'm master of the patrol boat, Bureau of Fisheries, "Petrel."

Q. How long have you been in such employ?

A. Since April, 1923.

Q. Now, are you familiar with the site of the stream emptying into Lucky Cove? A. Yes, sir.

Q. Now, I will ask you to step over to this map which is in evidence for the purpose of illustration,



(Testimony of Iver N. Stensland.)

and point out the stream, the location of the stream you have reference to, on chart No. 8075.

A. This is Lucky Cove right there.

Q. Where is the stream?

A. This is the stream—this indentation running right in the center of the cove.

Q. What island is that cove on?

A. That's on Revillagigedo Island.

Q. What are the waters surrounding that cove?

A. This is Annette Island, this island here, and this is Revillagigedo Channel, and this is Behm Canal going up here, and on this side is Thorn Arm.

[58]

Q. Now, then, turn to this map here. Turn to the Government's Exhibit No. 1, a map illustrating, introduced for the purpose of illustration, and point out the stream emptying into Lucky Cove.

A. This is the stream here, coming out of the woods and emptying into Lucky Cove.

Q. Now, where is Booth Fisheries floating trap No. 3 with reference to that stream?

A. This is Booth Fisheries trap marked out this way.

Q. Now, what part of the trap is that where it is marked B?     A. B.

Q. What part of the trap is that?

A. That is the shore end of the lead, where it is fastened to a cedar tree.

Q. Now, point out there on that exhibit, Mr. Stensland, where the tide comes at high tide, the boundary mark at high tide.

(Testimony of Iver N. Stensland.)

The COURT.—What place?

The WITNESS.—Lucky Cove.

The COURT.—In the Cove?

The WITNESS.—Yes, sir. The high tide covers these flats on both sides of the creek up to here (pointing). This is the high land, grass and timber, along this line here.

Q. Now, point out on that map the meander line of low tide; that is, mean low tide.

A. The meander line of mean low tide is this shaded line, this line outside of the shaded area. There is a gravel bar there and it goes dry right at the mouth of the stream at mean low tide; the low water line goes along past here. Hence it is quite rocky along close to that, around the end of the lead of the trap, rocky soil, and this shore here is a shallow gravel flat. [59]

Q. Now, I will ask you, Mr. Stensland, if you were up in Lucky Cove in and around the territory which you have just explained this summer during the months of July, August and September?

A. Yes, sir.

Q. Now, I will ask you if you had occasion to make any measurements in that cove this summer?

A. I did.

Q. Now, what measurements did you make there, Mr. Stensland?

A. I measured it with Mr. Ball and Captain Hunter and Ragan and myself—measured from the end of the lead here to a point of the north side

(Testimony of Iver N. Stensland.)

of the mouth of the creek, right at the mouth of the creek.

Q. Now, on that map there, marked A, what does that A designate if you know?

A. That designates the mouth of the stream at mean low tide.

Q. Now, what is the position of salt water and fresh water at that particular point?

A. Right there at that point is where the fresh water of the stream enters salt water.

Q. At mean low tide?

A. At mean low tide.

Q. Now what is the distance that you determined from point B to point A on that map?

A. 978 feet.

Q. How was that measured?

A. That's measured—well, the nearest point, twenty-five feet out on the lead from where the lead is fastened to the cedar tree.

Q. Lead of what? [60]

A. Lead of the trap.

Q. Point out about where you started.

A. This is the cedar tree on the bank above high water that the trap lead is fastened to.

Q. And where did you start?

A. And we started twenty-five feet out on the beach.

Q. Now, follow your course.

A. (Continuing.) From that tree, and that gives us a line that cleared this timber line up here straight out to a point here where the low-water line

(Testimony of Iver N. Stensland.)

had a bend in it up towards the shore, so that we measured 600 feet to the extreme point of this bend and then took a slight angle and we got a straight line from there to the mouth of the stream. I had determined the mouth of the stream at low tide and placed some rocks there to sight from. Mr. Ball was sighting the chain with his transit straight out to this point 600 feet and then he set up his transit and we sighted that chain in a straight line to this point at the mouth of the creek, so that we got 378 feet on that line.

Q. Now, Mr. Stensland, what is the distance that you determined from point B, on the lead of that fish-trap, to point A, where fresh water meets salt water at mean low tide in this stream?

A. Along the line that we measured is 978 feet.

Q. Now, did you make any other measurement there at any other time?     A. I did.

Q. Point that out.

A. We measured it the same time, the same day we measured to this 600-foot point here and out to this high-water point on the stream. [61]

Q. Did you make any other measurements?

A. I made measurements there last year, the first time I was in there.

Q. When did you make that measurement from point B to point A, Mr. Stensland?

A. That was on the 24th of November.

Q. 1924?     A. Yes, sir.

Q. And who was with you?

A. Mr. Ball, Hunter and Mr. Ragan.

(Testimony of Iver N. Stensland.)

Q. Can you tell us on what days you were up in that cove, Lucky Cove this year, Mr. Stensland?

A. I can by looking up my log.

Q. Is that log kept by yourself?      A. Yes.

Q. All right. Tell us when you were up in that cove, Mr. Stensland.

A. The first is August tenth.

Q. No; that's 1923, August 10th.

The COURT.—Never mind. You have asked your question. Let him testify.

A. The first time I was in Lucky Cove was July 23d.

The COURT.—What year?

A. This year; 1924.

Q. Now, was that trap fishing, Booth Fisheries trap No. 3, at Lucky Cove, was that trap fishing on the 23d day of July, 1924?      A. Yes, sir.

Q. When were you next at that point?

A. I was there the next day on July 24th. [62]

Q. 1924?      A. Yes, sir.

Q. Was this Booth Fisheries trap No. 3 fishing at that time?      A. Yes, sir.

Q. Now, I will call your attention again to that note you have and ask you when you were next at Lucky Cove?

A. The next time at Lucky Cove was July 31st.

Q. Were you not there the 26th of July?

A. No, sir.

Q. Was the trap fishing on the 31st of July, 1924?

A. Yes, sir.

(Testimony of Iver N. Stensland.)

Q. When next were you at the site of this Booth Fisheries trap No. 3?

A. I was there on August sixth.

Q. Was the trap fishing at that time?

A. Yes, sir.

Q. When next were you at the site of this trap?

A. On August seventh.

Q. Was the trap at that time fishing?

A. Yes, sir.

Q. When next were you at the site of this trap?

A. On September 11th.

Q. Now, did you do anything with reference to the creek at that time; that is to say, on the 11th of September, 1924?

A. On September 11th I went up the creek.

Q. Who went up there with you, if any one?

A. Mr. Suemala went with me.

Q. How far up the creek did you go at that time? A. I judge two miles.

Q. That is, the creek which empties into Lucky Cove? [63] A. Yes, sir.

Q. That you are speaking of now, is that correct?

A. Yes, sir.

Q. Did you make any examination at that time to determine whether there were any salmon running up that creek or not? A. Yes, sir.

Q. What was the result of your examination?

A. I found a considerable number of salmon in that stream at that time.

Q. Did you make any estimate of the number of

(Testimony of Iver N. Stensland.)

salmon you saw in this stream emptying into Lucky Cove on the 11th of September, 1924?

A. I did, sir.

Q. What was your estimate?

A. I estimated in the whole stream that there was about 15,000 fish in the whole stream.

Q. What kind of fish?

A. Humpbacks and dog salmon.

Q. Did you make any estimate to determine the number, the percentage of the fish which were humpies and the percentage of the other kinds of fish?

A. I figured there were eighty per cent humpies and twenty per cent dogs.

Q. Was trap No. 3 fishing at that time?

A. No, sir.

Q. When next were you at the site of this trap after September 11, 1924?

A. Well, I stayed there over night and was there the next morning; left there at nine about on September 12th.

Q. When next were you there at the site of this trap after [64] September 12, 1924?

A. I passed the place on September 14th.

Q. Was this trap fishing at that time?

A. No, sir.

Q. When next were you at this creek in Lucky Cove? A. That's September 15th.

Q. Now, was the trap in at that time?

A. No, sir.

(Testimony of Iver N. Stensland.)

Q. Did you make any examination of the creek at that time?     A. Yes, sir.

Q. Was any person with you?     A. Yes, sir.

Q. Who?     A. Mr. Suemala and Iver Thue.

Q. Who is Mr. Suemala?

A. Mr. Suemala is a warden in the Bureau of Fisheries.

Q. And who is Mr. Thue?

A. Mr. Thue is outside man for the North-western Fisheries.

Q. What was your purpose in going up that creek at that time; that is, on September 15, 1924, with Mr. Thue and Mr. Suemala?

A. I had a wire or instructions from Mr. Ball to go down to Lucky Cove and examine that stream and get Mr. McCue to come with me for that purpose to examine the stream in regards to the fish that was in it and fishing conditions.

Q. Well, did you get Mr. McCue?

A. I wired to him from Ketchikan, told him to meet me at Lucky Cove on Monday morning at ten o'clock.

Q. Did he meet you?

A. (Continuing.) Ten-thirty. Mr. Thue met me in his place. [65]

Q. That's the witness who has just testified before you?     A. Yes, sir.

Q. Now, what did you do there on the fifth of last September, 1924?

A. We went up the creek a little ways and looked at the salmon that there was in it, and the



(Testimony of Iver N. Stensland.)

river had fell then quite a bit and the gravel bars were bare, some of the bars in the creek were bare, and in these bare bars, why, we dug into the gravel with our hands and dug out quite a number of salmon eggs, and some of them were fertile and some of them were not—just like they ordinarily are in salmon streams.

Q. How far did you go up this stream emptying into Lucky Cove beyond the high-tide line?

A. Oh about a thousand feet or so.

Q. What did you see there? A. Saw salmon.

Q. Did you make any estimate at that time to determine the number of salmon in that stream?

A. I made an estimate that in the distance that we went up there, a thousand feet, I estimated that there was 3,000 salmon in that part of the stream.

Q. Did you take any notice of the kind of salmon? A. Yes, sir.

Q. What kind did you see?

A. Humpbacks and dog salmon.

Q. Did you make any estimate to determine the percentage of humpbacks and dogs?

A. I estimated that it was just about the same that it was the other time I was there—eighty per cent humpies and twenty per cent dogs. [66]

Q. I will ask you if Mr. Thue was with you during all this examination that you made?

A. On this day, yes.

Q. Do you know the number of this floating trap in Lucky Cove? I mean by that the territorial license number.

(Testimony of Iver N. Stensland.)

A. Oh, I don't remember just now.

Q. Did you notice any figure there on that trap?

A. Oh, yes; there was a number there on the trap and the name was on it—Northwestern Fisheries.

Q. Did you see the words Booth Fisheries on there?

A. Yes; there was Booth Fisheries on there, too. All the traps was marked the same way—a license number, a territorial license number and also the number of the trap. It's called Lucky Cove trap.

Q. Whose trap is that?

A. Northwestern Fisheries and Booth Fisheries; all the same concern.

Q. Now, Mr. Stensland, were you up in this stream at any time during 1923?      A. Yes, sir.

Q. Give us the dates.

A. I was there on August 10, 1923.

Q. Was this trap in at that time?      A. Yes, sir.

Q. Did you see any fish there in that stream?

A. I saw fish in the bay then, in Lucky Cove, but not in the stream.

Q. When next were you at this particular point in 1923?

A. Well, I stayed all night there and left there in the morning of August 11th. [67]

Q. When next did you visit this stream in 1923?

A. On September 13th.

Q. Did you make any observations on the 13th

(Testimony of Iver N. Stensland.)

of September, 1923, to determine whether or not there were any salmon in the stream?

A. Yes, sir; we made an estimate, estimating the salmon in the stream at that time.

Q. How far up the stream did you go there on September 13, 1923?

A. We went up about a mile that time.

Q. Anyone with you?

A. Mr. Hungerford was with me that time.

Q. Did you make any examination to determine whether there were any salmon in the stream at that time or not? A. Yes, sir.

Q. What was the result of your examination?

A. I didn't make any estimate. I didn't put down any estimates. Only I put down that there was quite a number of humpies and dogs in the stream at that time.

Q. You know whether the trap was in there at that time? A. No; the trap was not in then.

Q. Now, were you there at any other time excepting August 10, 1923? That is, August 10 and September 13, 1923. I will ask you if you were there during the month of August, 1923.

A. I was there on August 21st.

Q. Was the trap in at that time?

A. Yes, the trap was in.

Q. Did you see any fish?

A. There was fish in the bay but not in the stream.

Mr. STABLER.—That'll be all. [68]

(Testimony of Iver N. Stensland.)

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Stensland, how long have you been with the Bureau? A. Since April, 1923.

Q. That was last year? A. Yes, sir.

Q. And your headquarters are in Ketchikan?

A. This year they were; yes.

Q. Where were they last year.

A. Well last year during the summer season, they were, too.

Q. You were down in the vicinity of Lucky Cove at that time? A. Yes, sir.

Q. Did you ever see any seine boats down there at that time?

Mr. STABLER.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—I'll hear from you.

Mr. FAULKNER.—I think perhaps it is, your Honor.

The COURT.—Objection sustained.

Q. You went up the stream first, this year, Mr. Stensland, on September tenth, did you say?

A. September 11th.

Q. September 11th. And you saw some fish up there then? A. Yes, sir.

Q. The trap had been taken away, then?

A. Yes, sir.

Q. The cannery was closed down? A. Yes.

Q. Closed down on the 19th of August. Now, what was the condition of the water in the creek at that time? A. On September 11th? [69]

(Testimony of Iver N. Stensland.)

Q. Yes. A. It was quite high.

Q. How was the weather—rainy or fine?

A. The weather was very rainy.

Q. How was it the 15th?

A. The 15th it had quit raining and the water had fell some in the creek.

Q. It was still rather high?

A. Yes, it was just like summer creeks are.

Q. Ever been up that creek at any of the times you have mentioned when the creek was dry?

A. I was there last summer at the very driest spell.

Q. Was it dry then?

A. The dry season, last summer.

Q. Now, in going up the creek, you say you went up the creek two miles?

A. On the 11th of September this year.

Q. What did you find up there two miles?

A. Salmon.

Q. No, I mean with reference to the creek. Was that the end of the creek?

The COURT.—What was that?

Mr. FAULKNER.—Was that the end of the creek? A. Oh, no.

Q. It extended farther up than that?

A. Oh, yes.

Q. What was the condition of the country up there two miles?

A. It was mountainous and the creek was not very swift, but it's got a good stiff current in it; but there's no falls or any cataracts.

(Testimony of Iver N. Stensland.)

Q. Were you there on November 24th of this year? [70] A. Yes, sir.

Q. With Mr. Ball? A. Yes, sir.

Mr. FAULKNER.—I think that's all.

Q. Oh, Mr. Stensland, I just want to ask you this: You say you saw some eggs down there in September of this year? A. Yes, sir.

Q. Did you estimate the number of eggs you saw?

A. Why we dug a lot of them out of the gravel. I estimated the percentage that was dead and that was alive.

Q. How did the percentage run?

A. Two out of twelve.

Q. Were dead?

A. Ten dead eggs out of a dozen.

The COURT.—There were ten dead eggs out of a dozen?

Q. Ten dead eggs.

A. That's under natural spawning conditions.

Q. Now, Mr. Stensland, as a matter of fact, do you know whether the territorial fish hatchery sent down there to get salmon eggs and couldn't get any this year?

A. I don't know anything about that.

#### Redirect Examination.

(By Mr. STABLER.)

Q. During the times that you were out on this creek in 1924, was the creek dry? A. No.

Q. Did you see it at any time in 1924 when salmon couldn't get up that stream?

(Testimony of Iver N. Stensland.)

A. No; not in 1924. There was plenty of water, lots of water [71] for salmon to go up all summer.

Q. How does the percentage of fertile and non-fertile eggs which you found in this stream compare with the percentage of fertile and nonfertile eggs found in other streams?

A. Just about the same.

Recross-examination.

(By Mr. FAULKNER.)

Q. Mr. Stensland, most of those eggs you found there were dry, weren't they?

A. They were. We dug them out of the gravel, out of the damp gravel.

Q. After the water had gone down?

A. They had been spawned during the freshet when the gravel bar was covered.

Q. How far up was that?

A. That was a thousand feet or so above the high-water mark.

Mr. FAULKNER.—That's all.

TESTIMONY OF EARLE L. HUNTER, FOR  
PLAINTIFF.

EARLE L. HUNTER, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. What is your name?

(Testimony of Earle L. Hunter.)

A. Earle L. Hunter.

Q. What is your position?

A. Master of the U. S. S. "Widgeon."

Q. Did you have occasion to be up around Lucky Cove this year? A. Yes, sir. [72]

Q. Were you over there about the 24th of November, 1924? A. I was.

Q. What did you do over there, Mr. Hunter?

A. Assisted in measuring the distance from the mouth of the creek to the trap lead.

Q. Now, I will call your attention to the Government's Exhibit 1 in this case, a map for identification, and ask you to step over here and point out where the measurements in which you assisted in making were taken.

A. Taken from twenty-five feet from the shore line there, from this line on here down to here (pointing).

Q. Now, on that map, at the letter B, what position is that with reference to the trap?

A. That is the shore end of the trap lead.

Q. And the letter A on that map, what does that letter indicate there?

A. That indicates the mean low-water mark of the stream, the mouth of the stream at mean low water.

Q. Now, where, with reference to the letter A, does the fresh water and salt water meet at mean low tide? A. Right there (pointing).

Q. And you measured the distance from B to A, is that correct? A. Well, I assisted.



(Testimony of Earle L. Hunter.)

Q. Yes.      A. Yes, sir.

Q. What is the distance from the point B, indicating the lead of the trap, to point A, indicating the mouth of the stream? That is, where fresh water meets salt water at mean low tide.

A. 978 feet.

Q. How was that measurement taken, with what kind of instrument? [73]

A. Steel tape, U. S. Government tested.

Q. Who assisted you in making this—

A. Mr. Ball, Captain Stensland and Mr. Ragan.

TESTIMONY OF ANTHONY McCUE, FOR  
PLAINTIFF.

ANTHONY McCUE, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHOUP.)

Q. Please state your name.

A. Anthony McCue.

Q. What is your occupation?

A. Fisheries.

Q. Are you employed by the Booth Fisheries Co.?

A. Yes, sir.

Q. In what capacity?      A. Superintendent.

Q. What cannery are you superintendent of?

A. Quadra.

Q. Sir?      A. Quadra.

Q. Quadra?      A. Yes, sir.

(Testimony of Anthony McCue.)

Q. Now, do you know the relationship between the Booth Fisheries Company and the Northwestern Fisheries Co.?    A. Yes, sir.

Q. What is it?

A. The Booth Fisheries Co. are the owners of the plants and traps and the Northwestern Fisheries Company are the operators. [74]

Q. To whom does the Northwestern Fisheries Co. belong?    A. Booth Fisheries Co.

Q. Has the Northwestern Fisheries Company any assets or liabilities?

A. Couldn't tell you that.

Q. Are you acquainted with the trap at Lucky Cove?    A. Yes, sir.

Q. When did you put that trap in this year?

A. 29th of June.

Q. 29th of June?    A. Yes, sir.

Q. How long did you fish it?

A. Well, it wasn't fishing on the 29th of June. It hadn't fished any until the third of August or July.

Q. The third of July?    A. Yes, sir.

Q. And then did you fish continuously until the 19th of August until the close season?

A. Continuously, or closed down Saturday night at six o'clock until Monday morning at six o'clock.

The COURT.—Saturday night until Monday morning?    A. Yes, sir; Saturday evening.

Q. Each week?    A. Each week.

Q. To whom was the license for the operation of that trap issued?    A. Booth Fisheries Company.

(Testimony of Anthony McCue.)

Q. And to whom was the permit by the Secretary of War issued to put in the trap?

A. That I don't know. [75]

Q. To whom do the fish belong that are caught in the trap?

A. The cannery is operated by the Northwestern Fisheries Company.

Q. Is it not a fact that the Booth Fisheries Company pays all the bills for the operation of that trap?

A. I couldn't say.

Q. You didn't handle the money? A. No, sir.

Q. Did that trap fish on July 26th this year?

A. I couldn't say that. I don't know whether July 26th was Sunday or Monday. It was fishing during July.

Q. Well, I'll show you the calendar for the month of July, 1924, and ask you whether or not you were fishing then? A. Yes, sir.

Q. That was on Saturday? A. Yes, sir.

Q. And you fished until six o'clock? And the day before, Friday the 29th of July, was the trap fishing? A. Yes, sir.

Q. Do you know, as a matter of fact, that—

A. (Interrupting.) Beg pardon?

Q. I say, you know, as a matter of fact, that it was, don't you? A. Yes; I think so.

Q. How many fish were caught in that trap in the year 1924, Mr. McCue? A. 57,000.

Q. Salmon? A. Yes, sir.

Q. How long have you been superintendent of that cannery? A. One year. [76]

(Testimony of Anthony McCue.)

Q. This is your first year?     A. Yes, sir.

Q. Did you ever examine the creek?

A. Yes, sir.

Q. When?

A. Oh, I don't know the dates. I have them—I have a memo in my pocket.

Q. Just refer to it.

A. I first examined the creek on the ninth of July.

Q. Was the trap fishing at that time?

A. Yes, sir.

Q. How far up the creek did you go?

A. One mile.

Q. Did you find any salmon?     A. No, sir.

Q. When again did you examine it?

A. On the 29th of July.

Q. Was the trap fishing then?     A. Yes, sir.

Q. Find any salmon in the creek?     A. No, sir.

Q. When did you examine it again?

A. The 16th of September.

Q. Was the trap fishing then?     A. Yes, sir.

Q. 16th of September?

A. No, sir; not the 16th of September; 16th of August, I should say.

Q. Oh, the 16th of August?     A. Yes. [77]

Q. Did you find any fish in the creek on the 16th of August?     A. No, sir.

Q. Was the trap fishing then, the 16th of August?

A. I don't remember whether it was or not. It was there. I don't know whether it was fishing that

(Testimony of Anthony McCue.)

day or not. I don't know whether the 16th was on Sunday or Monday.

Q. Saturday.

A. Saturday? Well, it fished part of the day.

Q. Did you go up the creek again?

A. I was up the creek on September 25th.

Q. That's after the gear was taken off the trap?

A. Yes, sir.

Q. Did you find any salmon there then?

A. No, sir.

Q. That's this year? A. Yes, sir.

Q. How far up did you go?

A. About a mile and a half.

Q. Find any salmon? A. No, sir.

Q. Find any spawn? A. No, sir.

Q. Did you see any dead salmon?

A. Yes, sir.

Q. Dead salmon on the banks? A. Yes, sir.

Q. All the way up? A. No, sir.

Q. How far up?

A. About, I should judge, six or seven hundred feet. [78]

Q. From the mouth of the creek? A. Yes, sir.

Q. Mr. McCue, do you remember the occasion of Mr. Thue's going up there? A. Yes.

Q. How did it happen that you did not go on that occasion?

A. Why I had an attack of grippe at that time and was—

Q. (Interrupting.) You were sick?

A. Yes, sir.

(Testimony of Anthony McCue.)

Q. Did you receive any communication from Mr. Ball relative to going up there?     A. No, sir.

Q. From anybody of the bureau?

A. Yes; I had a wire from Mr. Stensland, I think.

Q. Did you send Mr. Thue in your place?

A. Yes, sir.

Q. You weren't there on November 24th?

A. No, sir.

Mr. SHOUP.—That's all.

Cross-examination.

(By Mr. FAULKNER.)

Q. How did Mr. Ball come to send Mr. Stensland down there, if you know, in September to examine the stream?

A. Why, Mr. Ball and Mr. O'Malley were at the cannery, I think on July 28th, and Mr. O'Malley said that he had met P. H. McCue—

Mr. STABLER.—(Interrupting.) We object, if the Court please, on the ground that it's purely hearsay—any conversation that he had with Mr. O'Malley is certainly not competent now. [79]

The COURT.—I'll hear from you.

Mr. FAULKNER.—Well, that's probably correct.

Q. I just wanted to know if you know, Mr. McCue, how Mr. Ball happened to send Mr. Stensland down. Did you request him?

A. Yes, I did. I asked Mr. Ball and also Mr. O'Malley if they would go down to Lucky Cove Creek and make an inspection of that creek with me.

(Testimony of Anthony McCue.)

Q. And is that why they wired you?

A. Yes, sir.

Mr. FAULKNER.—That's all.

Redirect Examination.

(By Mr. SHOUP.)

Q. I want to ask you another question on direct examination. Are you acquainted with P. H. McCue? A. Yes, sir.

Q. What position, if any, does he occupy with the Booth Fisheries Company?

A. General manager and vice-president.

Q. I show you this and ask you if you recognize that signature? A. Yes, sir.

Q. Mr. McCue is your father? A. Yes, sir.

Q. Do you know Mr. Smithers? A. Yes, sir.

Q. What position does he occupy with the Northwestern Fisheries Company?

A. Well, I don't know whether he occupies any in the Northwestern Fisheries or not. He's the vice-president of the Booth Fisheries Co.

Mr. SHOUP.—That's all. [80]

TESTIMONY OF JOHN H. DUNN, FOR  
PLAINTIFF.

JOHN H. DUNN, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHOUP.)

Q. Your name is John H. Dunn? A. Yes, sir.

(Testimony of John H. Dunn.)

Q. Clerk of this court?     A. Yes, sir.

Q. As such clerk you have the custody of the financial reports of foreign corporations doing business in the Territory of Alaska?

A. We get a copy of their financial reports.

Q. I will ask you whether or not the reports of the Northwestern Fisheries Corporation are filed in your office?     A. They are.

Q. Have you the annual report of the financial condition of the Northwestern Fisheries for the year 1923-24?

A. That is for the year ending 1923, on the face of it; that's what it shows.

Q. The year 1923?     A. Yes, sir.

Q. You have that?     A. Yes, sir.

Q. And is that a copy or is that the original?

A. It's the original. They have to file copies in the district clerk's office and in the secretary's.

Q. By whom is that signed?

A. P. E. Smithers—I can't quite make out the initials.

Q. What title? [81]     A. Vice-president.

Q. What corporation?

A. This is the Northwestern Fisheries Company—Northwestern Fisheries Company is a corporation—by Smithers, Vice-president.

Q. What does that statement show as to the assets and liabilities of the Northwestern Fisheries Company?

The COURT.—What is the purpose of this?

Mr. SHOUP.—Well, the question is— There



(Testimony of John H. Dunn.)

has been some testimony that the other corporation should be indicted, and there has been some testimony to the effect that the Northwestern Fisheries Company was fishing this trap and not the Booth Fisheries Company, and I want to show that they are one and the same.

The COURT.—I don't see how that has any effect on it.

Mr. SHOUP.—It will, if your Honor will let me introduce the document.

The COURT.—If there is no objection.

A. This statement shows that the company has no property and the statement says the company has no liabilities.

Q. What is that other paper you have in your hand?

A. That's a letter signed by Mr. P. H. McCue.

Q. Who is he?

A. Manager of the Booth Fisheries Company, or of the Northwestern Fisheries Company, I can't tell from the letter which.

Q. What is that?

A. It's a letter from P. H. McCue.

Mr. FAULKNER.—Oh, I don't think that's material. I object to it as incompetent, irrelevant and immaterial and not the best evidence. [82]

The COURT.—I think I'll admit the statement.

Q. I wish you would read that letter to the jury.

The COURT.—It may be received.

(Whereupon a letter, dated February 16, post, was received in evidence and marked Plaintiff's Exhibit No. 1.)

(Testimony of John H. Dunn.)

The WITNESS. — (Reading:) “Northwestern Fisheries Company, Booth Fisheries Co., owner; General Offices 600 Marion Building, Seattle, Washington; February 16, 1924. Clerk of the U. S. District Court, Division No. 1, Juneau, Alaska.

“Dear Sir:

“We enclose herewith one copy of annual report for 1923 for the Northwestern Fisheries Company, for filing in your office, together with 10¢ in stamps to cover filing fee.

“The original has been filed with the Secretary of the Territory.

“In explanation of the fact that the Northwestern Fisheries Company has no property or liabilities, beg to advise that said company is owned by the Booth Fisheries Company, Chicago, Illinois, and is not actively operating, but the organization of the corporation is maintained to preserve the name of the Company and its use in connection with the business of the Booth Fisheries Company.

“Kindly acknowledge receipt and oblige,

“Very truly yours,

“P. H. McCUE,

“Manager.”

The COURT.—To show that the Northwestern Fisheries Company is not actively operating.

Mr. SHOUP.—Well, our contention is that they are one and the same.

The COURT.—The only question in my mind is that if the [83] Northwestern Fisheries Com-

pany is operating and this indictment is against the Booth Fisheries Company, why the Booth Fisheries Company would not be liable if the Northwestern Fisheries Company was operating—

Mr. FAULKNER.—The Northwestern Fisheries Company was operating the trap. As I say, the only purpose of the whole thing is this: we don't want to have the trial result in an acquittal of the Booth Fisheries Company and then have to try the Northwestern Fisheries Company, and for that reason I wouldn't object to their adding the name of the Northwestern Fisheries Co. as defendant in this case.

Mr. STABLER.—Now, we object to any argument of this case before the jury. That matter has been satisfactorily explained to the Court. If he wants to offer any evidence, we have no objection to that.

The COURT.—The letter will be admitted in evidence.

(Whereupon said letter was received in evidence and marked Plaintiff's Exhibit No. 1.)

TESTIMONY OF IVER N. STENSLAND, FOR  
PLAINTIFF (RECALLED).

IVER N. STENSLAND, recalled as a witness on behalf of the plaintiff, having been already duly sworn, testified as follows:

Direct Examination.

(By Mr. STABLER.)

Q. Mr. Stensland, you testified in this case that

(Testimony of Iver N. Stensland.)

you were over at Lucky Cove around this stream emptying into Lucky Cove on the 23d day of July, 1924. A. Yes, sir.

Q. 24th of July, 1924? A. Yes, sir.

Q. 31st of July, 1924? [84] A. Yes, sir.

Q. August 6th, August 7th? A. Yes, sir.

Q. September 11th, 12th, September 14th and September 15th? A. Yes, sir.

Q. Now, did you make any observations around there during the time the trap was fishing and its fishing position to notice what the salmon were doing around the mouth of this stream?

A. Yes, sir.

Q. Now, what was the effect of this trap being in this position with reference to salmon approaching the stream?

Mr. FAULKNER.—I object to it as incompetent, irrelevant and immaterial. The question is whether the trap was within the prohibited distance and whether it is a salmon stream.

The COURT.—No; not under the statute. Objection overruled.

A. When I was in Lucky Cove—

Mr. FAULKNER.—I ask an exception.

The COURT.—You may take an exception.

The WITNESS.—Answer the question?

Mr. STABLER.—Yes.

The COURT.—Yes.

The WITNESS.—When I was in Lucky Cove on those occasions, examining the trap and the stream, I saw fish schooling around the bay, or in

(Testimony of Iver N. Stensland.)

the cove, in front of the trap, or in front of the mouth of the creek, and on those same occasions I didn't see any fish going up the stream because the trap was catching the fish that was acclimatizing themselves around the mouth of the stream. They were coming from the salt water and naturally they couldn't stand the sudden change from salt water to fresh water. They play [85] around the mouth of the stream for several days until they get acclimated and get a chance to get ready to go up the stream, and while they were circling around the bay, this trap was so close to it that they were getting caught, and that's the reason there was no fish in the mouth of the stream, and I didn't expect to find any while the trap was there because that's the way it was last year.

Now, what was the effect after this trap was removed and you went to the trap on September 11th, September 12th, September 14th and September 15?

A. I went there for the purpose of determining the escapement of fish that was going to the stream, to report to the Bureau of Fisheries, and I knew there would be fish in the stream, which there was at that time, and that's the time I went two miles up the stream and made my estimations of what I found there—eighty per cent humpies and 20 per cent dogs—and the trap had been out a long time so that the fish had a chance to get up.

Q. You know when the fish start to run in that part of the country?

(Testimony of Iver N. Stensland.)

A. Yes, sir. They start to run up through Revillagigedo Channel and up past this trap there in July around after the fourth or the first part of July.

Mr. STABLER.—That's all.

Cross-examination.

(By Mr. FAULKNER.)

Q. How long did they run after that, Mr. Stensland?

A. Oh, they kept running up until September.

Q. Now, what do you mean by "running"?  
[86]

A. Why, coming up from the ocean. They were catching them in the trap.

Q. Now, they come into the stream at that time, during that period, do they? A. Yes, sir.

Q. How long do they continue to pass into the stream?

A. It's a long time after that, after they come past those traps out in the channel and until they actually go up into the stream.

Q. I mean, how long does that period extend that they are passing into the streams from deep water?

A. Well, they start into those streams about the 15th or 20th of July. They start into those streams, a few of them, and then later on, the latter part of July, there is quite a number gets into those streams along there, and in August and even in September there's fish going up the streams.

(Testimony of Iver N. Stensland.)

Q. Do they continue until the last of September?

A. Yes.

Q. Longer than that?

A. Oh, yes; they continue till the first of November in a good many places.

Q. Going into the streams? A. Yes.

Q. Now, when they get into the streams, how long do they generally continue there?

A. How long they're in the streams?

Q. Yes.

A. Oh, they're in there a couple of weeks, about, until they die; about that time in those short streams.

Q. Now, as a matter of fact, don't some of them stay in the [87] streams until November and December?

A. Coho is a later run of fish and they're found in December.

Q. Aren't the dogs also?

A. Well, in some places there's some dogs found in the first part of December, but it's very seldom.

Redirect Examination.

(By Mr. STABLER.)

Q. Now, just one more question about your visit over there in 1923. You testified, I believe, that you were there on August 8th and September 21st, 1923? A. Yes, sir.

Q. What was the condition of the weather during those months with reference to the rainfall?

A. Well, in 1923, it was one of the driest seasons and lowest stages of water in the creeks that I have known of in Alaska and many of the streams was

(Testimony of Iver N. Stensland.)

dry and a lot of the good streams was almost dry.

Q. Now, with reference to this particular stream was it entirely dry during any of your visits in 1923? A. No; not entirely dry.

Q. Was it dry enough to prevent salmon from getting into that stream?

A. No; it was passable for salmon.

Mr. STABLER.—That's all.

Recross-examination.

(By Mr. FAULKNER.)

Q. During those times that you have mentioned when the fish were coming into this place, this bay or cove, what became of them during the close period from Saturday night until Monday morning of each week? [88] A. Well, between—

Q. (Interrupting.) What's that?

A. Between Saturday night and Monday morning of each week, there's a 36 hours' close season.

Q. Well, would the fish stop then and wait for the trap to open up or would they go on in?

A. Well, they would be circling around for probably two weeks around a place like that.

Q. None of them would go into the mouth of the creek then? A. No.

Q. They were all over on that shore where the trap was?

A. Fish usually play around the mouth of a stream, this stream as well as all the other salmon streams where it enters into salt water, for ten days or two weeks, and they would be caught dur-



(Testimony of Iver N. Stensland.)

ing that time and there wouldn't be any left to go up.

Q. Well, now, Mr. Stensland, from the end of that trap in Lucky Cove over to the other shore there is some place, isn't there? I mean from the outside, from the spiller of the trap? A. Yes.

Q. To the island, to the other shore?

A. To the island; yes.

Q. There is some space in there? A. Yes.

Q. How much?

A. Oh, there's a space there of probably somewhere over a thousand feet.

Q. Now, fish could go in there? A. Oh, yes.  
[89]

Q. You mean to say that none of them could go up in there?

A. That is the only way they could get into that bay is through that space.

Q. Do you mean to say that none of them would go in there during the weekly close period?

A. That's where they come in. They would come in between the trap and that island and they would be in front of the creek and that's where they would circle around to acclimatize themselves and be caught while they were doing that.

Q. Did you ever see any going out of there?

A. Fish going out?

Q. Yes.

A. Well, they would be going in, back and forth.

Q. Do you mean to say that they would go in

(Testimony of Iver N. Stensland.)

there and back out again and circle around the trap? A. Oh, yes.

Q. They would? A. Yes.

The COURT.—I would like to ask you a question or two, Mr. Stensland. You have examined this trap, haven't you? A. Yes, sir.

The COURT.—Did it have a double heart or single heart?

A. I couldn't tell you for sure whether it was a double heart or a single heart. I examined it with reference to the heart walls next to the pot and the tunnel aprons.

Redirect Examination.

(By Mr. STABLER.)

Q. Let me ask you one more question. Did you make an examination of the opening in the heart with reference to whether [90] the trap was fishing from one side or from both sides?

A. Oh, yes.

Q. What was your observation?

A. It was fishing on both sides.

TESTIMONY OF EDWARD M. BALL, FOR  
PLAINTIFF (RECALLED).

EDWARD M. BALL, recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. SHOUP.)

Q. Mr. Ball, when did you first find out that this

(Testimony of Edward M. Ball.)

trap was located within the prohibited distance from the mouth of that creek?

A. On the 26th of July.

Q. What year? A. 1924.

Q. Sir? A. July 26, 1924.

Q. When were you first informed that there was a trap there?

A. We had reports in 1923 about the location of this trap, but no satisfactory measurement was made from the trap to the mouth of the creek at low water.

Q. How does it happen that you did not start this prosecution in 1923?

A. For the reason that there was a question about the character of this stream, whether salmon used it for spawning, and in order not to prejudge the company we decided to make a further observation this year.

Q. I will ask you whether or not in the spring of 1924 you communicated with this corporation regarding the number of traps and the location of the traps that were put in? [91]

A. I addressed and mailed a letter to the Northwestern Fisheries Company at Quadra, on May 28, 1924, asking them for a list of the traps they would operate in connection with their cannery and the location of each one.

Q. What reply did you receive?

A. I received no reply.

Q. When were you first informed that this trap was put in in 1924?

(Testimony of Edward M. Ball.)

A. On the 25th of July, 1925, when I reached Ketchikan.

Q. Nineteen twenty—?      A. '24.

Q. That was the first you knew about the trap being in?

A. Yes, and we went to the trap the next day.

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Ball, you wrote this letter on May 28th?

A. Yes, sir.

Q. That was a circular letter, wasn't it?

A. I addressed a similar letter to every cannery in southeastern Alaska.

Q. Now, wasn't the principal part of that letter dealing with the method of opening heart walls during the Sunday close period?

A. There was a paragraph in the letter devoted to that subject, the opening, and the second paragraph had to do with the location of the traps.

Q. That was written on May 28th?

A. It was to this particular company. I sent some out on the 24th of May. [92]

Q. Then you wrote a letter about June ninth, rescinding the instructions contained in your first letter, didn't you?

A. In so far as the opening of the heart walls is concerned.

Q. You told them in that letter to disregard the letter of the 28th?

A. Not in its entirety. I told them in so far as

(Testimony of Edward M. Ball.)

the instructions in regard to the opening of the heart walls were discussed in the letter of May 28th, they would be disregarded.

Q. Now, you examined the records in the treasurer's office, you say, this morning?     A. Yes, sir.

Q. And ascertained the name of the company that took out the license?     A. Yes.

Q. But you didn't notice the date?

A. Not the date of the license.

Q. You don't know that?     A. No.

Q. Do you know whether it was in January of this year?

A. I think it was early in the year.

Q. Early in January?

A. Because of the number that was given to this particular trap.

Mr. FAULKNER.—That's all.

Mr. SHOUP.—That's our case.

Mr. FAULKNER.—If the Court please, the defendant now moves the Court to dismiss counts two and three in the information which is numbered, I think, 1778—the last information that was filed. Those are two counts that charged the company with fishing on September 10th and 11th. The evidence [93] shows that they were not fishing—

Mr. STABLER.—(Interrupting.) We have no objection.

The COURT.—Yes; they will be dismissed as to those two counts.

(Testimony of Iver Thue.)

Whereupon the defendant, to maintain the issues on its part, introduced the following testimony, to wit:

TESTIMONY OF IVER THUE, FOR DEFENDANT.

IVER THUE, called as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. Mr. Thue, you testified that you went up the little stream at Lucky Cove with Mr. Stensland on September 15, 1924? A. Yes, sir.

Q. And you say you saw some salmon there?

A. Yes, sir.

Q. Some dogs and humpbacks? A. Yes, sir.

Q. And also, I think you said you saw some eggs? A. Yes, sir.

Q. About how many eggs did you see?

A. About a hundred, I should judge.

Q. About a hundred? A. Yes.

Q. Did anybody gather those eggs? A. Yes.

Q. Who?

A. Mr. Stensland and his deck-hand and myself.

Q. Now, what is the average number of eggs that a coho or humpback or dog salmon would lay in a season? A. About 3,000. [94]

Q. Mr. Thue, have you been at the location of this trap many times during the past season?

(Testimony of Iver Thue.)

A. About four times, I should judge.

Q. What's that? A. About four times.

Q. Did you see, at any of those times, any seine fishermen fishing between the trap and the mouth of the creek? A. Yes, sir.

Mr. STABLER.—We object to the question, if the Court please, as incompetent, irrelevant and immaterial and as having no bearing on the case.

The COURT.—Objection sustained.

Mr. FAULKNER.—We'll ask an exception.

Q. Mr. Thue, do you know Mr. Olson who testified here this morning? A. By sight, yes, sir.

Q. Did you have any conversation with him this morning regarding this case? A. Yes.

Q. Where was that? A. Out in the hall.

Q. Now, at that time did he tell you that he "hoped or wished that the Booth Fisheries Company would 'get it in the neck' "?

A. No; he said he was sure they would lose this case; that he was sure they would lose this case.

Q. Did he say—

The COURT.—(Interrupting.) Now, here. He has stated what he said.

Mr. FAULKNER.—Well, I just wanted to ask him a question. [95]

Q. Is that all he said? A. No.

Q. What else did he say?

Mr. STABLER.—We object to that. No proper foundation has been laid for any impeaching question except the one that he asked him in the first instance.

(Testimony of Iver Thue.)

The COURT.—Yes.

Mr. FAULKNER.—Well, I think the only way I can ask him is in those words.

The COURT.—You did ask him the words.

Q. Let me ask you this question: Don't answer this, Mr. Thue. I will ask you if he didn't say, in that talk, that—

Mr. STABLER.—We object to that. No proper foundation laid for this impeaching question.

The COURT.—Objection sustained.

Mr. FAULKNER.—We'll ask an exception.

The COURT.—You can ask him—you can put in the same question you asked him “or words to that effect.”

Q. Don't answer this until the Court rules on it. Did you, in the hall this morning, have a conversation with the witness John Olson in which he said this, or words to that effect, that he “hoped or wished that in this case the Booth Fisheries Company would ‘get it in the neck’ ”?

The COURT.—Answer that yes or no.

Q. Those words or words to that effect.

The COURT.—Yes or no.

Q. Answer that yes or no. Did you have a conversation with him in which he stated that, or words to that effect?

A. He said—

Q. (Interrupting.) Just answer that yes or no.

[96]

A. No.

Q. What's that?      A. No.



(Testimony of Iver Thue.)

Q. Mr. Thue, you testified this morning, or this afternoon, that this trap was in the same place in 1924 that it was in 1922. A. Yes, sir.

Q. How do you know that?

A. I was down and inspected it in 1922.

Q. Are there any marks, or is there any mark by which you can tell? A. Yes.

Q. What is it? A. There's a tree.

Q. What mark is on the tree? What has the tree got to do with it?

A. It shows by the cable that has been fastened around the tree that you fasten the lead wire to.

The COURT.—What kind of tree was it?

A. If I remember right, it was a cedar tree.

Mr. FAULKNER.—I think that is all.

TESTIMONY OF ANTHONY McCUE, FOR DEFENDANT (RECALLED).

ANTHONY McCUE, recalled as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. Mr. McCue, you are the superintendent of the Northwestern Fisheries? A. Yes.

Q. At Quadra? [97] A. Yes.

Q. In charge of the cannery there? A. Yes.

Q. And I think you stated on your direct examination that this trap was put in early in July?

A. Yes.

(Testimony of Anthony McCue.)

Q. Or the last of June. When did you first fish it? A. July third.

Q. And the fishing was closed down, I think you stated, on the 19th of August? A. Yes.

Q. Now, did you cease fishing operations then? A. Yes.

Q. Altogether? A. Yes.

Q. You were through for the season? A. Yes.

Q. When did you take the trap away?

Mr. STABLER.—Well, if the Court please, that was all brought out by the same witness before.

Mr. FAULKNER.—I don't think so.

The COURT.—I don't remember whether he testified that he ceased fishing on the 19th of August or not. I'm inclined to think—

Mr. FAULKNER. — (Interrupting.) What's that?

The COURT.—I'm inclined to think he did.

Mr. FAULKNER.—I'm asking him now when he took the trap away. I don't think he testified to that. Mr. Thue testified this morning the 20th or 21st.

The COURT.—Mr. Thue testified that he took it away on the [98] 20th, the next day after they ceased fishing, or the 21st.

Q. When did you take the trap away?

A. The trap was towed away on the 20th.

Q. 20th of August? A. Yes.

Q. And there was no fishing after that?

A. No.

Q. Now. Mr. McCue, were you present when Mr.

(Testimony of Anthony McCue.)

Ball and Mr. O'Malley came down to the cannery in July?     A. Yes.

Q. Who is Mr. O'Malley?

A. He's the Commissioner of Fisheries.

Q. Head of the Fisheries Bureau in Alaska?

A. Yes.

Q. Did you have any conversation with them about this trap?     A. Yes.

Q. Did he make any complaint about that—

Mr. SHOUP.—I object to any conversation with Mr. O'Malley. Mr. O'Malley is not on the witness-stand. It's only hearsay.

Mr. STABLER.—He has already testified to that, your Honor. He testified to that before.

Mr. FAULKNER.—Well, I don't want to ask him twice, but I don't recollect—

The COURT.—(Interrupting.) I don't recollect that he testified as to what conversation he had with Mr. Ball or with Mr. O'Malley.

Mr. STABLER.—I think he did.

The COURT.—I don't recollect it.

Mr. FAULKNER.—No; I don't think he did. The reporter can look back and see. Well, I'll withdraw the question. [99]

Q. Mr. McCue, you say this was your first year as superintendent?     A. Yes.

Q. Were you ever there before?     A. Yes.

Q. What year?     A. 1918.

Q. Was this particular trap at Lucky Cove in there then?     A. Yes.

Q. At what point?     A. Same identical point.

(Testimony of Anthony McCue.)

Q. Were you at the trap that year? A. Yes.

Q. Do you know Mr. Kerr who testified this morning? A. No, sir.

Q. Was he watchman at that trap in 1918?

A. Not that I know of.

Q. Was there any man by the name of Olson superintendent of the cannery at Quadra in 1918, or at any other time? A. No, sir.

Q. Now, you testified that you had been up this creek in September of this year? A. Yes, sir.

Q. Now, Mr. McCue, when did you leave Quadra to go to the States? A. September 23d.

Q. Did you at that time take the crew with you? A. Yes.

Q. Now, during the fishing season did you have a watchman on this trap?

A. Yes; we had two. [100]

Q. Where are they now? A. California.

Q. Do you know where they are? Do you know their address? A. I do not.

Q. When did they go to California?

A. They left for California three days after we arrived in Seattle.

Q. And you left Quadra on the 23d of September?

A. Yes, sir.

Q. When you went up the stream on September 21st, or whatever date it was, how far up did you go? A. About a mile and a half.

Q. How long is that creek?

A. About a mile and a half.

(Testimony of Anthony McCue.)

Q. Now, you have been up there on other occasions     A. Yes.

Q. Now, what was the condition of the water in the creek when you were up there during the other time that you have testified to?

A. The last time?

Q. No; the other time. Was there water in the creek or not?     A. Very little.

Q. Now, were there any times when the creek was dry?     A. Not absolutely.

Q. Not absolutely?     A. No.

Q. How much water was there in it?

A. During July, the greater part of August, too, why, I should judge there was about two or three inches of water in the creek.

Q. What is the bed of the creek like? [101]

A. Rocky.

Q. Are there any sand bars or gravel bars in the creek?     A. There are some near the beach.

Q. Some near the beach?

A. Within 500 feet of the beach or salt water.

Q. Now, up at the upper end of the creek, at its source, what kind of country is it?

A. Muskeg.

Q. Muskeg?

A. Sort of muskeg-like at the head of the creek.

Q. Now, Mr. McCue, how long have you been engaged in the fish business?     A. Since 1912.

Q. Has that been experience around canneries during that period?     A. Yes.

Q. Every year?     A. Yes.

(Testimony of Anthony McCue.)

Q. Do you know the habits of humpbacks and dog salmon when they enter fresh water?

A. Quite well.

Q. Now do you know the nature of the creeks in which they go to spawn? A. Yes.

Q. Is this one of the creeks— Is this a salmon stream? A. No.

Q. Now, you say that when you were up there in September, you didn't see any salmon?

A. I saw a few dead salmon.

Q. On the banks? [102] A. Yes.

Q. Now, if dogs go into a creek late in September, say about the 15th of September would they usually be gone out of there by the 21st of September, or say, by the 25th of November?

A. No; I have seen dogs in streams up until the tenth of December at least.

Q. Up until the tenth of December. And when they get into a place like that, if there is water in there, do they usually come out or do they usually stay in?

A. On some occasions they back out with the tide. They go in with the salt water and back out with the salt water.

Q. But if they go into fresh water, do they usually stay up there? A. Yes.

Q. I think you testified that the reason you didn't go previously with Mr. Stensland to make this examination was that you were sick? A. Yes.

Q. Has this creek any name?

A. It has a local name.

(Testimony of Anthony McCue.)

Mr. FAULKNER.—I think that's all.

Cross-examination.

(By Mr. SHOUP.)

Q. What is the local name of that creek?

A. Lucky Cove.

Q. Lucky Cove Creek? A. Yes.

Q. Who did you say left Quadra on September 23d to go to Seattle? [103]

A. I left and the cannery crew also left.

Q. This year? A. Yes, sir.

Q. Now, when was it that you were up this creek in September? A. 21st.

Q. Is that the last time you were up there?

A. Yes.

Q. How much water was there in the creek then?

A. A part of the creek was dry, and in some of the holes there was from a foot to three feet of water, in the holes.

Q. Were there any places where the creek was absolutely dry? A. No.

Q. Well, by two or three inches, do you mean that it was two or three inches deep, or do you mean two or three miner's inches of water?

A. Two or three inches of water, deep.

Q. That was at the riffles? A. On the rips.

Q. Between the holes? A. Oh, yes.

Q. Isn't it a fact that salmon can go up a place where there is two or three inches of water?

A. All depends on the kind of salmon.

Q. Well, dog salmon?

(Testimony of Anthony McCue.)

A. Dog salmon? Well, I don't think they could get over that.

Q. How about humpbacks? A. Humpbacks?

Q. Yes.

A. I think a humpback could get there in three inches of water.

Q. A humpback could go up in very little water?  
[104]

A. I don't think they could get up on less than three inches.

Q. You say this is not a salmon stream?

A. I have never considered it a salmon stream.

Q. What do you consider a salmon stream, or what is your definition of a salmon stream?

A. I consider a salmon stream where there is salmon in the stream during the salmon season.

Q. Will you please repeat that?

A. I consider a salmon stream a salmon stream during the run of salmon, during the salmon season.

Q. What is a salmon season?

A. The salmon season depends entirely on the different districts.

Q. At that place?

A. At that place from July first until November 25th or the first of December, in that district.

Q. Then if there are any salmon running up that stream during that time for the purpose of spawning, wouldn't that be a salmon stream, according to your definition?

A. If any salmon?

Q. If any salmon went up there at all during



(Testimony of Anthony McCue.)

that period, it would be a salmon stream, wouldn't it?

A. If salmon went up there, it would be a salmon stream, I suppose, providing sufficient salmon went up. Salmon sometimes back up with the tide.

Q. How far could they back up in Lucky Cove Creek?

A. I never saw any salmon in the creek.

Q. You saw a few dead salmon?

A. I saw a few dead salmon on the banks.

Q. But regardless of what you have seen, how far could they back up the stream on the tide?  
[105]

A. I should judge three-eighths of a mile.

Q. And those salmon would simply back in there as the tide went in and out again? A. Yes.

Q. You heard Mr. Thue testify that he saw two or three hundred fish in Lucky Cove creek this year, several hundred feet up above high-tide line, did you not?

A. I don't know whether I heard him say high-tide line or not.

Q. Seven or eight hundred feet?

A. I heard him say 800 feet from the mouth of the stream.

Q. 800 feet from the mouth of the stream?

A. Yes.

Q. Now, that was on September 15th of this year?

A. Yes.

Q. Were fish running at that time?

A. Beg pardon?

(Testimony of Anthony McCue.)

Q. Were salmon running at that time?

A. On September 15th?

Q. Yes. A. Yes.

Q. Now, assuming that Mr. Thue's telling the truth and that fish were in there on that day as he said he saw them, would you consider that a salmon stream? A. No.

Q. You wouldn't? A. No.

Q. Now, please define just what a salmon stream is?

A. Well, you'll have to ask someone else besides me. I couldn't tell you exactly because if that's a salmon stream, there are thousands of salmon streams in Alaska that are not [106] considered salmon streams.

Mr. SHOUP.—Now, if the Court please, we object to that statement and move to strike it out as not responsive to the question. It's all voluntary on his part.

The WITNESS.—I'm not an authority on salmon by any means. There is no one that knows exactly—

The COURT.—(Interrupting.) Well, now, wait a moment. You are not here to talk right along. You are on the witness-stand to answer questions that are asked. The answer will be stricken.

Mr. STABLER.—What is the Court's ruling?

The COURT.—It will be stricken—his voluntary remarks.

Q. Now, Mr. McCue, you don't consider yourself sufficient of an expert to testify as to what is a salmon stream?

(Testimony of Anthony McCue.)

A. I think that a salmon stream is a stream—

The COURT.—(Interrupting.) Answer the question.

Q. Do you or not?

The COURT.—Do you or do you not? A. No.

Mr. SHOUP.—That's all.

TESTIMONY OF STANLEY ADAMS, FOR  
DEFENDANT.

STANLEY ADAMS, called as a witness on behalf of the defendant, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. Will you state your name?

A. Stanley Adams.

Q. Where do you live? A. At Ketchikan.

Q. How long have you lived there? [107]

A. Thirteen years.

Q. Do you know where Lucky Cove is?

A. Yes, sir.

Q. Have you ever been there? A. I have.

Q. Do you know where the brook or stream is in Lucky Cove? A. Yes, sir.

Q. Have you been up that stream, Mr. Adams?

A. Quite a ways; yes, sir.

Q. How far?

A. Why, I would estimate it at a mile and a half or two miles possibly.

Q. Is that up to the source?

(Testimony of Stanley Adams.)

A. Not quite to the source, but where the stream practically gives out.

Q. How many times have you been up there?

A. I don't know exactly now. I would say that I have been there six or seven times in the period that I have been in Alaska.

Q. What took you out there? A. Trout fishing.

Q. Trout fishing?

A. Fishing for trout; yes, sir.

Q. What time of the year? During what months?

A. I have been there in June and in July and in August and once in the winter time.

Q. Once in the winter? A. Yes.

Q. At any of those times did you ever see any salmon in that stream?

A. I have no recollection of seeing any salmon in Lucky Cove Creek. [108]

Q. What kind of salmon did you catch?

A. Small rainbow trout.

Q. Did you ever catch any Dolly Vardens?

A. Not to my recollection; not in that creek; no sir.

Q. Do you do a good deal of fishing?

A. Quite a little trout fishing; yes, sir.

Q. Did you ever catch any Dolly Vardens?

A. Oh, yes; lots of times.

Mr. SHOUP.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—I don't see the purpose of it.

Mr. FAULKNER.—Well, the purpose of it is to find out whether Mr. Adams knows whether that

(Testimony of Stanley Adams.)

is a salmon stream or not. There are certain species of trout that are always found in salmon streams, and I want to find out if there were any of that species in this creek.

The COURT.—You better ask him first—

Mr. FAULKNER. — (Interrupting.) What's that?

The COURT.—You can ask him if that is so first.

Q. Mr. Adams, is there any particular species of trout that you find in salmon streams?

A. I found three species of trout in salmon streams.

Q. Well, is there one species of trout that always goes into salmon streams, that you always find in streams where there are salmon?

A. Well, you usually find the Dolly Varden.

The COURT.—Now, answer that yes or no.

The WITNESS.—Yes; I would say yes.

Q. What kind? A. Dollies. [109]

Q. Did you ever find any Dolly Vardens in this stream?

A. No, sir; not in Lucky Cove Creek, I never have caught a Dolly there.

Cross-examination.

(By Mr. SHOUP.)

Q. Are you engaged in the fishing business?

A. No, sir.

Q. What is your occupation?

A. With J. R. Heckman & Co., in the hardware department.

(Testimony of Stanley Adams.)

Q. You were simply up there on a sporting trip, were you not?     A. Yes, sir.

Q. And in answer to Mr. Faulkner's question if you caught any Dolly Vardens there, you said you had no recollection?     A. Yes, sir.

Q. Is that true?

A. That's true and also true of another creek close by.

Q. You may have caught them there?

A. Possibly, but I have no recollection of it.

Q. And you don't know positively whether there are Dolly Vardens in that creek or not?

A. I can't state positively.

Q. There may be?     A. There may be; yes, sir.

Q. Now, Mr. Faulkner asked you if you saw any salmon in there and you said you had no recollection of seeing any salmon, is that what you meant?

A. That's what I meant to convey. I never saw any salmon up there.

Q. You have no recollection of it?

A. I have no recollection of seeing any on any of my trips. [110]

Q. Do you know whether salmon could go up that stream?     A. I don't know.

Q. Sir?

A. I can't state positively. I have only an opinion.

Q. You say you have no recollection of seeing them yourself?     A. No.

Q. On those occasions were you paying particular attention to salmon?

(Testimony of Stanley Adams.)

A. Yes; and one will usually observe that. I have seen lots of salmon run.

Q. You were up there simply for trout fishing?

A. Just fishing for trout.

Q. No interest in the fishing business?

A. None whatever.

Q. Was the trap fishing there at that time?

A. The first time— I have been up in Lucky Cove before there was any trap at all.

Q. Sir?

A. I have been in Lucky Cove when there was no trap there.

Q. In what month?

A. In June and in July.

Q. How long ago was that?

A. I have no exact recollection of the date. I would say it was in 1916; possibly 1917.

Q. 1917? A. I wouldn't say for sure.

Q. Were you up there last year? A. No, sir.

Q. Were you up there in 1923? A. 1921

[111]

Q. That's the last time?

A. Last time; yes, sir.

Q. And was the trap fishing there when you were there in August? A. Yes, sir.

Q. Was the trap fishing when you were there in July?

A. I couldn't say. I don't know that I have been in Lucky Cove Creek— I know that I have been there in all three months, but I couldn't say which months or what year. It's beyond me.

(Testimony of Stanley Adams.)

I have no recollection. I had no occasion to make any record of the date.

Q. And you haven't been there since 1921?

A. No, sir; I have not.

Q. Ever been there when the trap was not fishing excepting in June and the trip you made in the winter time? A. I don't think so.

Q. The trap was always there?

A. I observed a floating trap.

Q. And the Dolly Vardens come in from the ocean the same as salmon? A. Yes.

Q. And they're caught in the trap the same as salmon? A. Yes, sir; as a rule.

Mr. STABLER.—That's all.

#### TESTIMONY OF A. J. SPRAGUE, FOR DEFENDANT.

A. J. SPRAGUE, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

##### Direct Examination.

(By Mr. FAULKNER.)

Mr. Sprague, will you state your name?

A. A. J. Sprague. [112]

Q. What is your business?

A. Oh, fish pirate.

Q. How's that? A. Fish culturist.

Q. What is the nature of your work, Mr. Sprague? What work have you been engaged in with reference to fishing?



(Testimony of A. J. Sprague.)

A. Well, the taking of trout and salmon spawn, shad and whitefish,

Q. Have you had any experience with hatcheries?

A. Yes, sir.

Q. How many years?

A. Well, practically all my life.

Q. Where were you employed this year, 1924?

A. Well, I was with the Burckhardt interests at a cannery.

Q. 1924? A. Yes.

Q. This summer?

A. And also with the Bureau of Fisheries on the census taking of salmon.

Q. What did you do for the Bureau of Fisheries—taking census? A. Yes.

Q. Where? A. Eva Lake.

Q. Now, Mr. Sprague, you say you have had experience in this kind of work all your life?

A. Practically; yes.

Q. Let me ask you this question: Do you know what a salmon stream is?

A. Well, my definition of a salmon stream, yes.

Q. What would it be? [113]

A. Well, I could make a comparison.

Mr. STABLER.—We object, if the Court please. It's a matter of law as to what a salmon stream is, and not a matter of fact.

Mr. FAULKNER.—I think counsel has asked his own witnesses this question.

Mr. STABLER.—He volunteered the information and we had to ask him; but we still maintain

(Testimony of A. J. Sprague.)

that it is a question of law and not a matter of fact to be testified to by this witness.

Mr. FAULKNER.—The question was asked of Mr. Olson and Mr. Kerr—direct question.

The COURT.—Well, I think it is a question of law, but inasmuch as the prosecution has asked the question, why I think the defense should be entitled to ask it. You may ask him.

Mr. SHOUP.—We submit that we never asked that question of any witness excepting the last witness on the stand, and we asked that on cross-examination.

The COURT.—Yes; you asked it of Mr. Olson.

Mr. FAULKNER.—And Mr. Kerr.

The COURT.—You asked them whether this was a salmon stream. You may answer.

Mr. SHOUP.—We didn't ask him for a definition of a salmon stream; we asked him if this was a salmon stream. We didn't ask him for a definition.

The COURT.—Yes; that's true.

Mr. SHOUP.—That's immaterial, too.

Q. What is a salmon stream, Mr. Sprague?

A. Well, I would say any stream that carries any number of salmon. [114]

Q. Any number. What do you mean by any number?

A. I mean, as an illustration, Gold Creek is not a salmon creek, but it carries a volume of water sufficient for that purpose.

(Testimony of A. J. Sprague.)

Q. Now, are there streams, do you know, where salmon go in, where occasionally a few salmon go in and come out again that are not salmon streams?

Mr. STABLER.—We object to that as having no bearing on this stream at all.

Mr. FAULKNER.—Your Honor, I would like to be heard on that. One of the witnesses for the Government, Mr. Stensland, has testified that he was down there on September 15th and saw a great many salmon, and Mr. McCue said he was down there one week later and didn't see any, and Mr. Ball said he was down there in November and saw none, and I want to find out, if those things are true, whether this would be a salmon stream. Salmon go into a stream with the tide and sometimes remain in there for a while and then come out.

The COURT.—He may answer.

(Question repeated by reporter.)

A. Yes, I believe that.

Q. Mr. Sprague, where do salmon spawn when they go into streams, do you know?

A. Well, they usually pick out the best available spawning grounds up on the upper reaches of the river.

Q. What kind of grounds are spawning grounds?

A. Well, gravel and sand.

Q. Do they go into rocky creeks to spawn?

A. I think we ought to ask the fish about that.

I wouldn't say. [115]

(Testimony of A. J. Sprague.)

Q. Let me ask you this question, Mr. Sprague, in your experience if there were 3,000 salmon, dog salmon in a creek on the 15th of September in fresh water, would they or would they not all be gone by the 24th of November, or would they remain in that creek, some of them?

Mr. STABLER.—We object to that question as not confining it to Lucky Cove Creek.

The COURT.—What?

Mr. STABLER.—We object to it because we ask that it be confined to Lucky Cove Creek. In a good many creeks that might be true.

The COURT.—Objection overruled. He may state what his experience has been in that respect.

Q. From your experience would that be so?

A. Well, they would all be dead, that particular run of spawning salmon.

Q. They all would be dead? A. Yes.

Q. Now, how late do the dog salmon run in the year?

A. Till the 15th of December.

Q. How late do the humpbacks run?

A. Well, they're usually through by the 15th of September in this district. Of course, it varies.

Q. How late do the cohoes run?

Mr. SHOUP.—We object to this question because the witness has indicated that he is testifying from his experience in this district, whereas the prosecution in this case is based on another district 250 miles out of here.

The COURT.—Yes; objection sustained.

(Testimony of A. J. Sprague.)

Q. Have you any knowledge of the habits of salmon and the [116] condition of streams in the Ketchikan district? A. Yes.

Q. Is there any difference down there between periods of the runs of salmon?

A. Yes, I think there would be.

Q. How late do dog salmon run in that district?

A. Well, I couldn't state on the dogs. We have done no work on them, but I do know there is a late run of dogs, but the usual period of spawning for dog salmon, in this district and Ketchikan, would be from July first until December 15th. There's three or four different runs, you understand.

Q. Yes. What is the average number of eggs that a salmon would lay, a dog or humpback?

A. Oh, 3,000 would be about right.

Q. Now, Mr. Sprague, do salmon go into the same stream every year? What I mean by that is—

The COURT.—(Interrupting.) Now—well, you may explain your question.

Q. What I meant to ask him— Don't answer until the Court rules on it. Would this condition arise in this district or the Ketchikan district, that salmon would go into a stream one year and not another?

A. I didn't get that quite.

Q. Would salmon, from their habits, humpbacks and dogs, go into one stream one year and not into that stream another year? For instance,

(Testimony of A. J. Sprague.)

the question I want to ask is this: if a stream has salmon in it one year, does it necessarily follow that it has every year? A. No; no.

Q. Would there be periods when there wouldn't be any salmon? [117]

A. Well, they don't spawn but once, so there wouldn't be any chance of their coming again.

Q. I mean, are there streams that there might be salmon in this year and then not for a number of years again? That is the question I want to get at.

The COURT.—You understand that?

A. No; I'll take that question again.

Q. Are there streams in which there would be salmon one year and perhaps no salmon again go up in that stream for a number of years?

A. Yes; that could be true.

Q. How long a period would that sometimes be?

A. We are all guessing at the cycle year of salmon. There is no authority on that. It might be four or seven years. In fact the king salmon might have a vote coming before he spawns.

Cross-examination.

(By Mr. SHOUP.)

Q. Some years salmon don't run as well as other years, too, isn't that so? A. Yes.

Q. Now, calling your attention to Lucky Cove Creek— You know where Lucky Cove creek is, do you not? A. How is that?

Q. You know where Lucky Cove creek is?

A. About where it is.

(Testimony of A. J. Sprague.)

Q. Were you ever up there?

A. I was down there taking inventories on some canneries close by.

Q. Were you ever up to the creek?      A. No.

[118]

Q. You know where it is, though?

A. About where it is; yes.

Q. Now, if 3,000 salmon were up there in Lucky Cove creek and salmon eggs were found in the gravel above high-tide line, would you consider that a salmon stream?

A. That's a whole lot of fish.

Q. Well, answer my question, please.

The COURT.—Is it a salmon stream, is the question.

A. If it contained 3,000, is that it?

The COURT.—Yes.

A. Yes.

The COURT.—And if there were salmon eggs found on the ground up there.

Q. Now, if salmon eggs were found above high-tide line in the gravel of that creek and several hundred fish were found above high-tide line in the creek, in fresh water, would you consider that a salmon stream?      A. No, sir.

Q. If they were spawning would you consider that a salmon stream or not?      A. No, sir.

Q. How many salmon would have to go up the creek to spawn before you would consider it a salmon stream?

A. Well, there would have to be a sufficient

(Testimony of A. J. Sprague.)

number to seed the bed of the available spawning ground.

Q. Well, if several hundred were actually up there in that creek and salmon eggs were found in the gravel of that creek—

A. (Interrupting.) Several hundred eggs?

Q. Yes. Wouldn't you consider that a salmon stream?

A. No; not—No, I wouldn't consider several hundred eggs— [119]

Q. Well, if you were to discover seven hundred eggs there through a period of digging around there for a bit in the gravel—I don't mean to say that if only that many eggs were up there in the creek; I mean if that many were found just in digging around in the gravel, would you consider that a salmon stream?

A. Well, do you mean— I don't get it exactly. Do you mean they would be in the fresh water or in brackish water.

Q. In the fresh water, and in the brackish water, too, of the creek.

A. Well, I wouldn't consider that a salmon stream.

Q. Well, if it was fresh water?

A. If it was fresh water and there were 3,000 salmon in there, it would be a salmon stream.

Q. So it depends on the number of fish in there, in the fresh water, does it, as to what is a salmon stream according to your definition?

A. Well, most of the salmon streams in Alaska



(Testimony of A. J. Sprague.)

are barred by impassable falls as soon as you get away from the beach for a couple of hundred yards and they are not available salmon streams because they have no spawning grounds.

The COURT.—Well, now, look here. Just consider your mind entirely off the definition of a salmon stream. If you find 300 salmon in that stream above the ordinary line of high tide in fresh water, would that be a stream in which salmon run?

A. Yes.

The COURT.—That's what the statute says.

Mr. SHOUP.—Yes.

The COURT.—A stream in which salmon run.

[120]

Redirect Examination.

(By Mr. FAULKNER.)

Q. Where do humpies spawn?

A. Usually in brackish water.

Q. In brackish water? A. Or tidal waters.

Q. Tidal waters? A. Or in the lagoons.

Mr. FAULKNER.—That's all.

TESTIMONY OF A. N. HERRALD, FOR DEFENDANT.

A. N. HERRALD, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. What is your business?

(Testimony of A. N. Herrald.)

A. Superintendent of the Pacific American Fisheries cannery at Excursion Inlet.

Q. How long have you been in the salmon canning business? A. Since 1912.

Q. In Alaska? A. Yes, entirely.

Q. Have you been in southeastern Alaska all that time?

A. No; I have been out on the Peninsula, Bering Sea.

Q. Where?

A. Out on the Peninsula and in the Bering Sea.

Q. Where were you in the year 1924?

A. I was at Excursion Inlet.

Q. Southeastern Alaska? A. Yes.

Q. Do you know the habits of dog salmon when they go into a stream? [121]

Mr. SHOUP.—We object to that unless the question is confined to the district in which the prosecution is laid in this case.

Mr. FAULKNER.—Southeastern Alaska district.

Mr. SHOUP.—Well, no.

Q. In the Ketchikan district of southeastern Alaska?

A. Well, I would think that the habits would be the same in the Ketchikan district that they are in this district, so far as I have had any chance to make any observations.

Q. Now, Mr. Herrald, your company owns a number of canneries, doesn't it? A. Yes, sir.

Q. Owns one in the Ketchikan district?

(Testimony of A. N. Herrald.)

A. They don't really own the plant, but they're operating it.

Q. Now, from your observations and your experience with dog salmon, if they go into a creek into which salmon run, about the 15th of September, would they naturally all be out of there by November 24th, or would there be some left in the creek.

Mr. SHOUP.—We object to that because this witness hasn't shown that he knows anything about salmon in the district where this prosecution is laid.

Mr. FAULKNER.—Oh, I think he has.

Mr. SHOUP.—He says his company owns a cannery down there.

The COURT.—You haven't asked him as to his knowledge.

Q. Have you had experience as cannery foreman for a number of years? A. Yes, sir.

Q. And have you had experience fishing?

A. I naturally get around to fishing. [122]

Q. With fish-traps?

A. Fish-traps and up salmon streams.

Q. How many years?

A. Well, in fact, 1912 is the first year that I got around to any salmon streams or canneries to speak of.

Q. You say that the conditions are the same with reference to the runs of salmon?

A. Well, the periods between the Ketchikan district and the Juneau district, my not having been

(Testimony of A. N. Herrald.)

in the Ketchikan district, I can only say that the habits of salmon around the Icy Straits district and along the Aleutian Peninsula, the Alaska Peninsula and the Aleutian Islands, as far west as Unimak or Umnak and in the Bering Sea, they're the same.

Q. For the same species? A. Yes.

Q. Now, would the habits of dog salmon, with reference to running into salmon streams, be the same in one district as in another? I mean the habits of salmon, not the periods of run.

A. They are in the district of which I know and have had opportunity to make observations.

Q. Now, I will ask you this question: If dog salmon are found in a stream in the middle of September in considerable numbers, would they all likely be gone by the 24th of November or would they still be in the stream?

Mr. SHOUP.—We object to the question for the reason that the witness is not qualified to testify with reference to the creek near which this trap is located, and further, he has no knowledge of the thing himself. It would be just a guess.

The COURT.—Well, I think he can answer. He has testified [123] as to the habits of salmon, that they were the same for the same species of salmon in the different districts, and that he considers the habits of salmon in the Ketchikan district would be the same as in this district, or in the districts in which he has had experience. The jury may take that into consideration.

(Testimony of A. N. Herrald.)

Q. Will you answer the question, Mr. Herrald?

A. Will I answer now?

The COURT.—Yes.

A. Why, I think there would be no salmon there in November if they entered this stream in September.

Q. Are dogs in the habit of running down there in streams later than they are in the streams—

The COURT.—Now, that is a different question. He can't tell anything about it if he doesn't know about the Ketchikan district.

Q. Do you know anything about the habits of salmon, dog salmon in going up the streams? Is there any difference between one district and another? A. Apparently not, so far as I can see.

Q. Now, how late would salmon continue to run in a stream, dog salmon?

Mr. SHOUP.—We object to that, for the reason that there is a considerable difference between different sections as to the time salmon run in them.

Mr. FAULKNER.—The witness says there's not.

The COURT.—Yes; he has testified that there is no difference in his judgment.

(Question repeated by reporter.)

A. I have known them to run in dog salmon streams until the [124] first of December.

Mr. FAULKNER.—That's all.

(Testimony of A. N. Herrald.)

Cross-examination.

(By Mr. SHOUP.)

Q. When does the dog salmon first run in the spring? A. Beg pardon?

Q. When does the—

A. (Interrupting.) Why, out in the Icy Straits district, we have an early run of dogs and they continue in small numbers through the entire season, and they are the last fish outside of the cohoes.

Q. There is another heavy run in the fall, is that not true? A. Yes, that is true.

Q. How about the humpbacks, do they all come in one school, or come two or three hundred at a time?

A. They keep stringing along, too, during the season. However, I think we figure that, so far as our fishing is concerned, we're through catching humpbacks along about the 15th of August.

Q. Is it the habit of humpback salmon to go immediately into fresh water or a spawning stream after they come from the ocean?

A. Well, I would say that they go immediately in after they come into the Straits.

Q. Isn't it a fact that they school up around the mouths of streams? A. Yes.

Q. And the same about dog salmon? A. Yes.

Q. You don't know anything about the Lucky Cove stream? A. Sir? [125]

Q. You don't know anything about the stream down there? A. No; I was never there.

Q. What time do the different runs of salmon

(Testimony of A. N. Herrald.)

come there during the year? Do you know anything about when those salmon runs take place?

A. No; I only know from hearsay, which wouldn't count in this case—from the Bureau of Fisheries regulation they're apparently ten days later, from the fact that they have made a regulation this last summer closing the season on a certain day, from the tenth of August in this district, or midnight of the 11th, whereas it is the 20th or 25th in the district below us.

Q. And the regulations were based primarily on the habits of the humpback salmon, are they?

A. I think so.

Mr. SHOUP.—We rest, your Honor.

Whereupon court adjourned until Wednesday, December 10, 1924, at ten o'clock A. M.

Wednesday, December 10, 1924.

Court met pursuant to adjournment, at 10 o'clock A. M.

Whereupon the defendant, by its counsel, presented its requested instructions to the Court.

Mr. FAULKNER.—I want to state to the Court that I notice that the sketch on the blackboard and the tracing of the War Department records have not been marked as exhibits.

The COURT.—They were introduced only for the purpose of illustration.

Mr. SHOUP.—If the Court please, counsel is willing to stipulate that they may be used as exhibits in the case. [126]

The COURT.—They may be introduced as ex-

hibits and it may be shown on the record that both counsel agreed that they be introduced as exhibits.

Mr. SHOUP.—That doesn't include the map, though.

Mr. FAULKNER.—No; not the map.

(Whereupon said tracing and sketch were received in evidence and marked Plaintiff's Exhibits Nos. 2 and 3 respectively.)

The evidence having been closed and arguments made by counsel, the Court instructed the jury as follows:

#### INSTRUCTIONS OF COURT TO THE JURY.

Ladies and Gentlemen of the Jury:

The defendant, the Booth Fisheries Company, is charged in two informations filed by the United States Attorney, with violations of the act of Congress of June 6, 1924, entitled "An Act for the protection of the fisheries of Alaska, and for other purposes." The first information was filed before the Court on October 16, 1924, and charges a violation of section 4 of the act.

The charge is that the Booth Fisheries Company, a corporation, at or near Lucky Cove, in the Territory of Alaska, and within the jurisdiction of this court, on the 26th day of August, 1924, in the waters of Revillagigedo Channel, between Thorn Arm and Behm Canal, in the First Division, Territory of Alaska and within the jurisdiction of this court, did then and there unlawfully fish for and take salmon for commercial purposes, by means of a fish-trap known as Booth Fisheries Company trap (license No. 21-179) within five hundred yards



of the mouth of a small unnamed creek, said creek being then and there a stream into which salmon run, contrary to the form of the statute in such cases made and provided. [127]

This section, which is section 4 of the statute, reads as follows: "That it shall be unlawful to fish for, take or kill any salmon of any species, or by any means except by hand rod, spear or gaff, in any of the creeks, streams or rivers of Alaska, or within 500 yards of the mouth of any such creek, stream or river over which the United States has jurisdiction, excepting the Karluk and Ugashik rivers."

This information charges, therefore, a violation of this section, in that the defendant, the Booth Fisheries Company, did fish for, take or kill salmon within 500 yards of the mouth of a stream in Alaska over which the United States has jurisdiction.

### I.

Now, I charge you that the United States has jurisdiction over all the streams of Alaska, and, therefore, it has jurisdiction over any stream emptying into the waters of Lucky Cove, between Thorn Arm and Behm Canal, as charged in the information.

### II.

Therefore, if you find from the evidence in this case, that the Booth Fisheries Company did fish for, take or kill any salmon of any species within 500 yards of the mouth of any stream in the Territory of Alaska, within the jurisdiction of this

court, over which the United States has jurisdiction, then it would be a violation of this section, and you should find the defendant guilty as charged in the information.

### III.

The second information, which you are also trying (it having been agreed by counsel for the United States and counsel for the defendant that the two informations should be consolidated [128] and tried together) was filed by the United States Attorney on the fourth day of December, 1924, in which it is charged that the Booth Fisheries Company violated section 3 of the act. Section 3 is as follows: "That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish-wheel or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska, at any point where the distance from shore to shore is less than 1,000 feet,"—now, here comes the alternative under which this charge is made,—“or within 500 yards of the mouth of any creek, stream or river into which salmon run, excepting the Karluk and Ugashik rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds; and the Secretary of Commerce is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream or river shall be taken to be a point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination.”

The charging part of this information is that the Booth Fisheries Co., on the 25th day of July, in the First Division, Territory of Alaska, in waters over which the United States has jurisdiction, to wit, at or near Lucky Cove, indenting the shore of Revillagigedo Island, between Thorn Arm and Behm Canal, within 500 yards of the mouth of a small unnamed creek emptying into Lucky Cove, the said creek being then and there a stream into which salmon run, not for the purpose of fish culture, did wilfully and unlawfully erect and maintain a floating fish-trap known as Booth Fisheries Company trap (license No. 24-179), with the purpose and result of capturing salmon and preventing [129] and impeding their ascent to the spawning grounds in this creek. You will notice that the charge is for placing the trap within 500 yards of the mouth of a stream which is alleged to be a stream into which salmon run, with the result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek.

#### IV.

Now, I charge you, in considering these two informations, that it is essential that you first be satisfied beyond a reasonable doubt that Lucky Cove creek, or the creek mentioned and known locally as the testimony shows, as Lucky Cove creek, is within the jurisdiction of this court, and to that end I charge you, as a matter of law, that the waters of Lucky Cove creek are within the jurisdiction of this court and you should so find.

## V.

The first question to come before you, then—and it is a question common to both informations—is, Was the stream at the head of Lucky Cove a stream into which salmon run? That is a matter which you should consider from the evidence. A stream into which salmon run, according to the statute as I interpret it, is a stream into which salmon are accustomed to run not at any particular time, but one into which salmon run at one interval or at another interval.

## VI.

If you should find that the stream known as and called Lucky Cove creek is a stream into which salmon run, then the next question which is common to both informations, is, Was the trap of the Booth Fisheries Company within 500 yards of [130] the mouth of such stream?

## VII.

To this end, I charge you that the mouth of a stream emptying into tide water, is the point of place where the waters of the stream meet tide water at mean low tide. It is not where the waters of the stream meet tide water at high tide, but where the waters of the stream meet tide water at mean—that is, the average—low tide.

## VIII.

If you should find that the stream known as Lucky Cove creek is a stream into which salmon run, as I have defined it to you, and you should further find that the trap was erected and maintained within 500 yards of the mouth of the stream

known as Lucky Cove creek, then you will consider whether or not the Booth Fisheries Company erected, maintained or kept such floating trap on the 25th of July and did fish for and take salmon for commercial purposes by means of such fish-trap on the 26th of July, and continuously from that time to and including the 20th day of August, 1924.

### IX.

I charge you, however, that it is not necessary that you should find that the fishing was continuous from the 26th day of July to the 20th day of August, 1924. Any fishing during that period by a fish-trap within 500 yards of the mouth of a stream into which salmon run would be a violation of the statute. And if you should find that the fishing was done by the defendant, the Booth Fisheries Company, within 500 yards of the mouth of Lucky Cove creek and that such creek is a stream or creek [131] into which salmon run, on any one day, then you should find the defendant guilty as charged in the above information. But if you should have a reasonable doubt from the evidence or because of a lack thereof, whether the stream is a stream into which salmon run or whether the trap was within 500 yards of the mouth of the stream, or whether the Booth Fisheries Company fished for or caught salmon for commercial purposes on any day named in the information, then you will find the defendant not guilty as to the first information.

## X.

As to the second information, the defendant is charged with unlawfully erecting and maintaining a floating fish-trap, with the purpose or result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek. As to this information, as I have stated to you, the two requisites to enable the prosecution to obtain a verdict against the defendant are whether or not the stream is a stream into which salmon run, and, second, whether or not the trap alleged to have been maintained by the defendant was maintained within 500 yards of the mouth of the stream, as I have defined it to you. A further requisite of proof on the part of the United States is whether or not such trap was maintained with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds in said creek. In order to determine this, you will consider whether or not there were any spawning grounds in said creek, and whether the fish-trap was erected and maintained with the result of capturing salmon and preventing and impeding their ascent to the spawning grounds in said creek, if you find there were spawning grounds in said creek. [132]

## XI.

A further question is whether there were any markers on that creek. I charge you that that is not material as to either of these informations. That clause in section 3 reading, "For the purposes of this section, the mouth of such creek, stream or

river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination," is only for the purpose of fixing the mouth of the creek when and as determined by the Secretary of Commerce. The testimony herein shows that the Secretary of Commerce had not fixed the mouth of the creek nor marked it, in which event it becomes a question of fact as to where the mouth of the creek is, to be determined by the jury in each particular case from the evidence and from the instructions given them by the Court. If, however, the Secretary of Commerce should determine where the mouth of the creek is and should mark it, then the Court would be bound by it; but, not having done so, the Court is not bound by it.

## XII.

Now, as to the question of notice to the defendant, that is not a material question in this case. Each offense in this case is what in law is called a *malum prohibitum*. The question of the good faith of the defendant does not arise in this case at all. The law provides that the defendant shall do certain things and the defendant is supposed to have notice of what the law provides. He is presumed to know the law, and where an act is prohibited which is not in itself immoral or wrong, it is termed a *malum prohibitum* and the defendant must do as the law requires him to do, whether his intention was to violate the law or not. [133]

## XIII.

In this case, which is a criminal case, of course,

the defendant is presumed to be innocent of the crime with which it is charged. This presumption of innocence attends the defendant throughout the trial of the case until the evidence satisfies the jury, beyond a reasonable doubt, of defendant's guilt.

#### XIV.

A reasonable doubt is a doubt based upon the evidence. It is not a captious doubt or a doubt not based upon the evidence, but is a doubt which arises in the minds of the jury after a careful consideration and comparison of all the evidence and is such a doubt as would cause one to hesitate or pause in the more important affairs of his own life.

#### XV.

You are the sole judges of the evidence in the case. When you retire to your jury-room, you should carefully consider all the evidence and from the evidence find the facts of the case and apply the law as given by the Court to the facts and render your verdict accordingly. You are not bound to find in conformity with the declarations of any number of witnesses which do not satisfy your minds against a less number or against a presumption satisfying your minds.

#### XVI.

Any witness who has testified falsely in one part of his testimony may be distrusted in other parts. In determining the credibility of a witness and the weight to be given to his evidence, you may take into consideration the interest, if any, [134]



shown by the witness in the result of the action, his apparent bias, candor and so forth, the reasonableness of his story, how far his testimony may be corroborated by other facts and circumstances in the case and give to each witness' testimony just such credit as you deem it is entitled to.

### XVII.

You are to take this case and decide it without bias or prejudice one way or the other and bring in your verdict upon the evidence and the instructions which I have given you. You should consider the evidence carefully, for if the Court has erred in his instructions, there is always a remedy by appeal to a higher court by the party injured, but if the jury does not find according to the evidence, there is no appeal from it and your verdict is final.

### XVIII.

Counts two and three in the second information were dismissed by the Court. You should not consider those counts in the information given to you by the clerk.

You will have two forms of verdict, in blank, one finding the defendant guilty or not guilty in cause No. 1749, and one finding the defendant guilty or not guilty in No. 1778.

When you retire to your jury-room, you will elect one of your number foreman and when you have arrived at a verdict in both cases, you will return such verdict into the courtroom in the presence of you all.

Whereupon, in open court and in the presence of the jury, the defendant, by its counsel, took the following exceptions, which were allowed:

Mr. FAULKNER.—The defendant excepts to the refusal of the [135] Court to give instruction No. 2, requested by the defendant, and instruction No. 3, requested by the defendant. The defendant also excepts to the instruction in which the Court stated, in substance, as follows: that the mouth of the creek or stream is the place where the waters of the stream meet salt water at mean low tide. Defendant excepts to the instruction given, in substance and effect, that it is not material that there were no markers to determine or mark the mouth of the stream; and to the instruction that no notice was required to be given the defendant and that the question of the good faith of the defendant does not arise at all.

And thereupon the jury retired for the consideration of its verdict.

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corporation.  
tion.

## INSTRUCTIONS REQUESTED BY DEFENDANT.

## II.

You are instructed that section 3 of the act of Congress of June 6, 1924, under which this prosecution is brought, provides as follows:

Sec. 3. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish-wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream or river into which salmon run, excepting the Karluk and Ugashik rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds, and the Secretary [136] of Commerce is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream, or river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive

or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance.

You are instructed that in this case, unless it has been shown that the Secretary of Commerce, or someone under his direction, determined and marked the point designated as the mouth of the stream in question, you must find the defendant not guilty.

### III.

You are instructed that in order to find the defendant guilty, it is necessary for the Government to prove that the stream in question was a stream or creek into which salmon ran prior to August 20, 1924; and if the Government has not proved that salmon ran into this stream, or in other words, that this was a creek into which salmon ran between the 3d day of July and the 20th day of August, 1924, your verdict must be not guilty.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1778-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES COMPANY, a Corporation.

VERDICT.

Special Nov. Term, 1924.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in 1778-B, and in so doing recommend leniency of the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924. [137]

J. E. BARRAGAR,  
Foreman.

Filed in the District Court, Territory of Alaska, First Division. Dec. 10, 1924. John H. Dunn, Clerk.

Entered Court Journal No. One, page 273.

In the District Court for the District of Alaska,  
Division Number One.

No. 1749-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES CO., a Corporation.

VERDICT.

Special Nov. Term, 1924.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in 1749-B, and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924.

J. E. BARRAGAR,  
Foreman.

Filed in the District Court, Territory of Alaska, First Division. Dec. 10, 1924. John H. Dunn, Clerk.

Entered Court Journal No. One, page 273.

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corporation.

MOTION FOR A NEW TRIAL.

Comes now the defendant, by its attorney, and moves the Court to set aside the verdict of the jury found and filed herein on December 10, 1924, and grant the defendant a new trial upon the following grounds, to wit: [138]

I.

The Court erred in sustaining the objection to the question propounded to the witness A. McCue, in which he was asked whether he had seen seine boats fishing at Lucky Cove between the trap men-

tioned in the information herein and the mouth of the stream.

II.

The Court erred in instructing the jury that the mouth of the creek or stream is the place where the waters of the stream meet tide water at mean low tide.

III.

The Court erred in instructing the jury in effect that it is not material whether there were any markers placed at the mouth of Lucky Cove stream by the Secretary of Commerce to determine the mouth of such stream.

IV.

The Court erred in instructing the jury that no notice is required to be given to the defendant, and that the question of good faith of defendant does not arise at all.

V.

The Court erred in refusing to give to the jury instruction No. 2 as requested by the defendant.

VI.

The Court erred in refusing to give to the jury instruction No. 3 as requested by the defendant.

H. L. FAULKNER,  
Attorney for Defendant.

Filed in the District Court, Territory of Alaska, First Division. Dec. 11, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [139]

But the Court overruled the defendant's motion

for a new trial, to which ruling of the Court the defendant excepted and was allowed an exception.

JUDGE'S CERTIFICATE TO BILL OF EX-  
CEPTIONS.

United States of America,  
Territory of Alaska,—ss.

I hereby certify that I am the Judge by and before whom the above-entitled cause was tried and that the foregoing bill of exceptions is a full, true and correct account and transcript of the evidence and proceedings had therein, and that it contains the evidence and all the evidence heard or considered at said trial.

I also certify that the said bill of exceptions was duly presented and filed within the time allowed by law and the rules of this Court.

Wherefore, said bill of exceptions being true and correct, I do now, within the time allowed by law and the rules of this Court, allow and settle same, and order it to be filed and to become a part of the records of this cause.

Dated at Juneau, Alaska, this 14th day of February, 1925.

THOS. M. REED,  
District Judge.



In the District Court for the District of Alaska  
Division Number One, at Juneau.

1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

### JUDGMENT AND SENTENCE.

These actions, numbered 1749-B and 1778-B, consolidated for [140] trial, came on regularly for trial on December 9, 1924, A. G. Shoup, United States Attorney, and H. D. Stabler, Special Assistant United States Attorney, appearing as counsel for the United States of America, and H. L. Faulkner, esquire, appearing for the defendant Booth Fisheries Company. A jury of twelve persons was regularly impaneled and sworn to try said actions, and witnesses on the part of the United States of America and Booth Fisheries Company, defendant, were duly sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the court, the jury retired to consider their verdict and subsequently returned into court with the following verdicts:

United States of America, District of Alaska.

In the District Court of the United States for  
the District of Alaska, Division Number One.

No. 1749-B.

UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES COMPANY, a Cor-  
poration.

VERDICT.

Special Nov. Term, 1924.

We, the jury impaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in 1749-B, and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924.

J. E. BARRAGAR,

Foreman.

United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1778-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES COMPANY, a Cor-  
poration.

VERDICT.

Special Nov. Term, 1924.

We, the jury impaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in No. 1778-B and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924.

J. E. BARRAGAR,

Foreman. [141]

WHEREFORE it is the judgment of the Court that the defendant, Booth Fisheries Company, a corporation, is guilty of the crime of illegal fishing by unlawfully fishing for and taking salmon for commercial purposes and not for local food requirements or for use as dog feed, by means of a fish-trap, known as Booth Fisheries Company's trap, license No. 24-179, within five hundred yards of the mouth of a small unnamed creek, said creek being then and there a stream into which salmon run, at or near Lucky Cove, indenting the shore of Revillagigedo Island between Thorn Arm and Behm Canal, in the waters of Revillagigedo Channel, in the First Division, District of Alaska, on the 26th day of July, 1924, continuously to and including the 20th day of August, 1924, as charged in the information filed in the within entitled court and cause No. 1749-B, and it is the sentence of the Court that said Booth Fisheries Company, a corporation, pay a fine of

Eleven Hundred (\$1100) Dollars; and it is the judgment of the Court that the defendant, Booth Fisheries Company, a corporation, is guilty of the crime of unlawfully erecting and maintaining a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawning grounds within 500 yards of a certain creek, unnamed, emptying into Lucky Cove, into which said creek salmon run, in the First Division, District of Alaska, on the 25th day of July, 1924, as charged in the information filed in the above-entitled court in cause No. 1778-B, and it is the sentence of the Court that said Booth Fisheries Company, a corporation, in addition to the fine hereinbefore imposed in case No. 1749-B, pay a further fine of Eight Hundred (\$800) Dollars [142] in cause No. 1778-B; and it is the further sentence of the Court that said Booth Fisheries Company pay the costs of cases Nos. 1749-B and 1778-B.

Dated at Juneau, Alaska, December 24, 1924.

THOS. M. REED,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Dec. 24, 1924.  
John H. Dunn, Clerk.

Entered Court Journal Vol. One, page 300.

In the District Court for the District of Alaska,  
Division Number One, at Juneau,

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion.

MOTION FOR STAY OF EXECUTION AND  
FOR ORDER ALLOWING TIME WITHIN  
WHICH TO FILE BILL OF EXCEP-  
TIONS.

Comes now the Booth Fisheries Company, de-  
fendant, and moves the Court to allow it sixty  
(60) days from December 24, 1924, within which  
to file the bill of exceptions herein on appeal  
and to grant it a stay of execution during said  
period.

H. L. FAULKNER,  
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Ter-  
ritory of Alaska, First Division. Jan. 3, 1925.  
John H. Dunn, Clerk. By N. B. Cook, Deputy.

[143]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1479 and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion.

BOND FOR STAY OF EXECUTION.

KNOW ALL MEN BY THESE PRESENTS:  
That we, Booth Fisheries Company, a corporation,  
doing business in Alaska, as principal, and B. M.  
Behrends and W. G. Johnson, both of Juneau,  
Alaska, as sureties, are held and firmly bound unto  
the United States of America in the sum of Two  
Thousand Five Hundred Dollars (\$2,500), to be  
paid to the said United States of America, for  
which payment well and truly to be made, we bind  
ourselves and each of us and each of our heirs,  
executors, administrators, successors and assigns  
jointly and severally firmly by these presents.

Signed and sealed this January 2, 1925.

The condition of the above obligation is such  
that whereas a judgment was entered on the 26th  
day of December, 1924, in the above-entitled court  
and cause in favor of the said United States of  
America, and against the defendant, Booth Fish-  
eries Company, a corporation, in the sum of Nine-  
teen Hundred Dollars (\$1,900) and costs, for vio-

lation of Sections III and IV of the act of Congress approved June 6, 1924, for the regulation and protection of the fisheries of Alaska; and whereas the said defendant desires to sue out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment, and whereas an order has been issued to stay execution on said judgment for a period of sixty days from December 24, 1924, the [144] day when said judgment was pronounced.

NOW, THEREFORE, if the above-bounden Booth Fisheries Company, a corporation, shall prosecute said writ of error to effect and answer all costs and damages which might accrue to said United States of America by virtue of said stay of execution, then this obligation to be void, otherwise the same to remain in full force and effect.

BOOTH FISHERIES COMPANY, a Corporation.

By H. L. FAULKNER,  
Its Agent and Attorney,  
Principal.

B. M. BEHRENDTS,  
W. G. JOHNSON,

Sureties.

United States of America,  
Territory of Alaska,—ss.

We, the undersigned, B. M. Behrends and W. G. Johnson, whose names are subscribed to the foregoing bond as sureties thereon, being first duly sworn, depose and say: That we are each worth the sum of Two Thousand Five Hundred Dollars

(\$2,500) over and above all our just debts and liabilities, exclusive of property exempt from execution, and that neither of us is an attorney, nor counselor-at-law, clerk in any court, nor other officer of any court.

B. M. BEHREND'S.

W. G. JOHNSON.

Subscribed and sworn to before me this third day of January, 1925.

[Seal]

J. F. MULLEN,

Notary Public for Alaska.

My commission expires Dec. 4, 1927.

Approved this 3d day of January, 1925.

THOS. M. REED,

Judge. [145]

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Jan. 3, 1925. John H. Dunn, Clerk. By N. B. Cook, Deputy.

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corporation.



ORDER ALLOWING TIME TO FILE BILL  
OF EXCEPTIONS AND GRANTING  
STAY OF EXECUTION.

This matter coming on for hearing this third day of January, 1925, upon the motion of the defendant to be granted sixty (60) days within which to file bill of exceptions herein, and granting it a stay of execution during said time.

IT IS HEREBY ORDERED that the defendant is granted sixty (60) days from December 24, 1924, within which to file its bill of exceptions herein; and

IT IS FURTHER ORDERED that execution herein be stayed until the expiration of said period on the condition that the defendant file herein a bond upon said stay of execution in the sum of Twenty-five Hundred Dollars (\$2500).

Done in open court this 3d day of January, 1925.

THOS. M. REED,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Jan. 3, 1925. John H. Dunn, Clerk. By N. B. Cook, Deputy.

Entered Court Journal No. One, page 310, [146]

United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1749-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES CO., a Corporation.

VERDICT.

Special Nov. Term, 1924.

We, the jury impaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in 1749-B and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924.

J. E. BARRAGAR,  
Foreman.

Filed in the District Court, Territory of Alaska, First Division. Dec. 10, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. One, page 273. [147]

United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1778-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES CO., a Corp.

VERDICT.

Special Nov. Term, 1924.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in #1778-B, and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of Dec., 1924.

J. E. BARRAGAR,  
Foreman.

Filed in the District Court, Territory of Alaska, First Division. Dec. 10, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. One, page 273. [148]

In the District Court for the District of Alaska, Division No. One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corporation.

MOTION FOR A NEW TRIAL.

Comes now the defendant by its attorney and moves the Court to set aside the verdict of the jury found and filed herein on December 10th, 1924, and grant the defendant a new trial upon the following grounds, to wit:

1.

The Court erred in sustaining the objection to the question propounded to the witness, A. A. McCue, in which he was asked whether he had seen seine boats fishing at Lucky Cove between the trap mentioned in the information herein and the mouth of the stream.

2.

The Court erred in instructing the jury that the mouth of the creek or stream is the place where the waters of the stream meet tide water at mean low tide.

3.

The Court erred in instructing the jury in effect that it is not material whether there were any markers placed at the mouth of Lucky Cove stream

by the Secretary of Commerce to determine the mouth of such stream.

4.

The Court erred in instructing the jury that no notice is required to be given to the defendant, and that the question of good faith of defendant does not arise at all. [149]

5.

The Court erred in refusing to give to the jury instruction No. 2 as requested by the defendant.

6.

The Court erred in refusing to give to the jury instruction No. 3 as requested by the defendant.

H. L. FAULKNER,  
Attorney for Defendant.

Copy received.

A. G. SHOUP,  
U. S. Atty.

Filed in the District Court, Territory of Alaska, First Division. Dec. 11, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [150]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

## ORDER OVERRULING MOTION FOR NEW TRIAL.

And now, to wit, on December 20, 1924, this matter came before the Court for hearing on Booth Fisheries Company's motion for new trial, which said motion was heretofore, to wit, on December 11, 1924, filed in the above-entitled court and cause; A. G. Shoup, United States Attorney, and H. D. Stabler, Special Assistant United States Attorney, appeared for the United States of America, and H. L. Faulkner, Esq., appeared for the defendant; and the matter being heard by the Court, and the law and the premises being by the Court fully understood and considered, IT IS HEREBY ORDERED that said motion for new trial be, and it hereby is, OVERRULED; to which ruling of the Court defendant excepted and said exception is allowed.

THOS. M. REED,  
District Judge.

Filed in the District Court, Territory of Alaska, First Division. Dec. 22, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. One, page 285.  
[151]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

1749-B and 1778-B.

UNITED STATES OF AMERICA

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

### JUDGMENT AND SENTENCE.

These actions, numbered 1749-B and 1778-B, consolidated for trial, came on regularly for trial on December 9, 1924, A. G. Shoup, United States Attorney, and H. D. Stabler, Special Assistant United States Attorney, appearing as counsel for the United States of America, and H. L. Faulkner, Esq., appearing for the defendant, Booth Fisheries Company. A jury of twelve persons was regularly impaneled and sworn to try said actions, and witnesses on the part of the United States of America and Booth Fisheries Company, defendant, were duly sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider their verdict and subsequently returned into court with the following verdicts:

“United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1749-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES CO., a Corporation.

VERDICT.

Special Nov. Term, 1924.

We the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in 1749-B and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of December, 1924.

J. E. BARRAGAR,  
Foreman.” [152]

“United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 1778-B.

THE UNITED STATES OF AMERICA

vs.

THE BOOTH FISHERIES CO., a Corporation.



VERDICT.

Special Nov. Term, 1924.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the information in No. 1778-B and in so doing recommend leniency by the Court.

Dated at Juneau, Alaska, this 10th day of Dec. 1924.

J. E. BARRAGAR,  
Foreman."

WHEREFORE, it is the judgment of the court that the defendant, Booth Fisheries Company, a corporation, is guilty of the crime of illegal fishing by unlawfully fishing for and taking salmon for commercial purposes and not for local food requirements or for use as dog feed, by means of a fish-trap, known as Booth Fisheries Company's trap, license No. 24-179, within five hundred yards of the mouth of a small unnamed creek, said creek being then and there a stream into which salmon run, at or near Lucky Cove, indenting the shore of Revillagigedo Island between Thorn Arm and Behm Canal, in the waters of Revillagigedo channel, in the First Division, District of Alaska, on the 26th day of July, 1924, continuously to and including the 20th day of August, 1924, as charged in the information filed in the within-entitled court and cause No. 1749-B, and it is the sentence of the Court that said Booth Fisheries Company, a corporation, pay a fine of Eleven Hundred (\$1100.00) Dollars; and it is the judgment of the

Court that the defendant, Booth Fisheries Company, a corporation, is guilty of the crime of unlawfully erecting and maintaining a floating fish-trap known as Booth Fisheries Company's trap, license number 24-179, with the purpose and result of capturing salmon and preventing and impeding their ascent to the spawning grounds, within 500 yards of a certain creek, unnamed, emptying into Lucky Cove, into which said creek salmon run, in the First Division, District of Alaska, on the 25th day of July, 1924, as charged in the information filed in the above-entitled court in cause [153] No. 1778-B, and it is the sentence of the Court that said Booth Fisheries Company, a corporation, in addition to the fine hereinbefore imposed in case No. 1749-B, pay a further fine of Eight Hundred Dollars (\$800.00) Dollars in cause No. 1778-B; and it is the further sentence of the Court that said Booth Fisheries Company pay the costs of cases No. 1749-B and 1778-B.

Dated at Juneau, Alaska, December 24, 1924.

THOS. M. REED,

District Judge.

Entered Court Journal No. One, page 300.

Filed in the District Court, Territory of Alaska, First Division. Dec. 24, 1924. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [154]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

### ASSIGNMENTS OF ERROR.

Comes now the above-named defendant and files the following assignments of error upon which it will rely in the prosecution of the writ of error in the above-entitled cause from the judgment and proceedings had by this Honorable Court, which said judgment was signed and entered in the above-entitled cause on December 24th, 1924.

#### I.

The District Court erred in overruling the objection of the defendant to the question propounded to the witness, Iver N. Stensland, by the United States Attorney, as follows:

“Now, what was the effect of this trap being in this position with reference to salmon approaching the stream.”

#### II.

The District Court erred in sustaining the objection to the question propounded by the defendant's counsel to the witness, Iver Thue, as follows:

“Did you see at any of those times any seine fishermen fishing between the trap and the mouth of the creek.”

### III.

The District Court erred in giving Instruction No. VII to the jury, which reads as follows:

“To this end, I charge you that the mouth of a stream emptying into tide water, is the point or place [155] where the waters of the stream meet tide water at mean low tide. It is not where the waters of the stream meet tide water at high tide, but where the water of the stream meet tide water at mean—that is, the average—low tide.”

### IV.

The Court erred in giving Instruction No. XI to the jury which is as follows:

“A further question is whether there were any markers on that creek. I charge you that that is not material as to either of these informations. That clause in section 3 reading, ‘For the purposes of this section, the mouth of such creek, stream or river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination,’ is only for the purpose of fixing the mouth of the creek when and as determined by the Secretary of Commerce. The testimony herein shows that the Secretary of Commerce had not fixed the mouth of the creek nor marked it, in which event it becomes a question of fact as to where the

mouth of the creek is, to be determined by the jury in each particular case from the evidence and from the instructions given them by the court. If, however, the Secretary of Commerce should determine where the mouth of the creek is and should mark it, then the court would be bound by it; but, not having done so, the court is not bound by it."

## V.

The District Court erred in giving Instruction No. XII which reads as follows:

"Now, as to the question of notice to the defendant, that is not a material question in this case. Each offense in this case is what in law is called a *malum prohibitum*. The question of the good faith of the defendant does not arise in this case at all. The law provides that the defendant shall do certain things and the defendant is supposed to have notice of what the law provides, He is presumed to know the law, and where an act is prohibited which is not in itself immoral or wrong, it is termed a *malum prohibitum* and the defendant must do as the law requires him to do, whether his intention was to violate the law or not."

## VI.

The Court erred in refusing to give Instruction No. II requested by defendant, which instruction reads as follows:

“You are instructed that Section 3 of the Act of Congress of June 6, 1924, under which this prosecution is brought, provides as follows:

“‘Section 3. That it shall be unlawful to erect or [156] maintain any dam, barricade, fence, trap, fish-wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream, or river into which salmon run, excepting the Karluk and Ugashik rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds, and the Secretary of Commerce is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream or river shall be taken to be the point determined as such by the Secretary of Commerce and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance.’”

“You are instructed that in this case, unless it has been shown that the Secretary of Commerce, or someone under his direction, determined and marked the point designated as the mouth of the stream in question, you must find the defendant not guilty.”

VII.

The Court erred in refusing to give to the jury Instruction No. III requested by defendant, which instruction reads as follows:

“You are instructed that in order to find the defendant guilty, it is necessary for the Government to prove that the stream in question was a stream or creek into which salmon ran prior to August 20, 1924; and if the Government has not proved that salmon ran into this stream, or in other words, that this was a creek into which salmon ran between the 3d day of July and the 20th day of August, 1924, your verdict must be not guilty.”

VIII.

The Court erred in overruling the defendant's motion for a new trial.

Dated at Juneau, Alaska, this 14th day of February, 1925.

H. L. FAULKNER,  
Attorney for Defendant.

Copy of the foregoing assignments of error received this 14th day of February, 1925, and service admitted.

LESTER O. GORE,  
Asst. United States Attorney.

Filed in the District Court, Territory of Alaska, First Division. Feb. 14, 1925. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [157]

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In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,  
Defendant.

### PETITION FOR WRIT OF ERROR.

To the Honorable THOMAS M. REED, Judge of the Above-entitled Court:

The above-named defendant, Booth Fisheries Company, a corporation, feeling itself aggrieved by the verdict of the jury rendered herein on December 10th, 1924, and the judgment and sentence thereon rendered in this Court on December 24, 1924, whereby the defendant, Booth Fisheries Company, was adjudged guilty of the crime of illegal fishing in violation of Section 264, Compiled Laws of Alaska as amended on June 6th, 1924, and regulations thereunder, and of Section 3 of the Act of June 6th, 1924, by unlawfully fishing for and taking salmon by means of a fish-trap within 500 hundred yards of the mouth of a small



unnamed creek at Lucky Cove, Alaska, and sentenced on December 24th, 1924, by the Judge of this court to pay a fine of Nineteen Hundred Dollars (\$1900.00) and costs.

Comes now the defendant and petitions this Honorable Court and prays the Court to allow it a writ of error from the Honorable United States Circuit Court of Appeals for the Ninth Circuit pursuant to law in such cases provided; also that an order be made herein staying the proceedings and execution in such case until further order of the United States Circuit Court of Appeals, and pending the prosecution of said writ of error; and that the Court shall fix the amount of security which the defendant shall give as a supersedeas [158] to said judgment on such writ of error.

BOOTH FISHERIES COMPANY, a Corporation.

By H. L. FAULKNER,  
Its Agent and Attorney.

By H. L. FAULKNER,  
Attorney for Defendant.

Service admitted February 14th, 1925.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska, First Division. Feb. 14, 1925. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [159]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

ORDER ALLOWING WRIT OF ERROR AND  
FIXING SUPERSEDEAS BOND.

This cause coming on to be heard in open court  
this 14th day of February, 1925, and the Court  
having examined the petition for writ of error  
herein and having heard counsel for the United  
States and for the defendant,

IT IS ORDERED that the writ of error be  
allowed in this case and the amount of superse-  
deas and costs bond to be filed herein be fixed at  
the sum of \$2500.00.

Done in open court this 14th day of February,  
1925.

THOS. M. REED,  
Judge.

Copy received February 14th, 1925.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 14, 1925. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. 1, page 349. [160]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS,  
That we, Booth Fisheries Company, a corporation,  
the above-named defendant, as principal, and Guy  
McNaughton and Geo. E. Cleveland, all of Juneau,  
Alaska, as sureties, are held and firmly bound unto  
the United States of America in the penal sum  
of \$2500.00 for which payment, well and truly  
to be made, we bind ourselves, and each of us,  
and our heirs, executors, administrators and suc-  
cessors, jointly and severally firmly by these pres-  
ents.

Signed and sealed at Juneau, Alaska, February  
14th, 1925.

The condition of the above obligation is such  
that whereas the above-named principal and de-  
fendant, Booth Fisheries Company, a corporation,  
is about to sue out a writ of error to the United  
States Circuit Court of Appeals for the Ninth  
Circuit to reverse the judgment in the above-

entitled court rendered in the District Court for the District of Alaska at Juneau, Alaska, on December 24th, 1924, and entered and made herein on December 24, 1924, whereby and by the terms of which the said defendant, Booth Fisheries Company, a corporation was sentenced to pay a fine of Nineteen Hundred Dollars (\$1900.00) for the crime mentioned in said judgment and sentence.

NOW, THEREFORE. the condition of this obligation is such that if the said defendant, Booth Fisheries Company, a corporation, shall [161] prosecute said writ of error to effect, and answer all costs and damages, if it shall fail to make good its plea, and shall at all times render itself amenable to the orders and process of this Court, or the United States Circuit Court of Appeals for the Ninth Circuit, and render itself in execution if the judgment of this Court is affirmed, or any judgment of this Court in said proceedings, or said Appellate Court, or any court, then this obligation shall be void; otherwise to remain in full force and effect.

BOOTH FISHERIES COMPANY, a Corporation.

By H. L. FAULKNER,  
Its Agent and Attorney,  
Principal.

GUY McNAUGHTON,  
GEO. E. CLEVELAND,  
Sureties.

Taken and acknowledged before me this 14th day of February, 1925.

[Court Seal] JOHN H. DUNN,  
Clerk of the District Court, District of Alaska, Division No. One.

Filed in the District Court, Territory of Alaska, First Division. Feb. 14, 1925. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [162]

United States of America,  
Territory of Alaska,—ss.

We, the undersigned, Guy McNaughton and Geo. E. Cleveland whose names are signed to the foregoing bond, being first severally duly sworn, each for himself and not one for the other, depose and say, that we are residents of the First Judicial Division, Territory of Alaska, and not counsellors-at-law, nor attorneys, marshals, deputy marshals, clerks of any court, nor other officers of any court; and that we are each worth the sum of \$2500.00 over and above all our just debts and liabilities and exclusive of property exempt from execution.

GUY McNAUGHTON.

GEO. E. CLEVELAND.

Subscribed and sworn to before me at Juneau, Alaska, this 14th day of February, 1925.

[Court Seal] JOHN H. DUNN,  
Clerk of the District Court, District of Alaska, Division No. 1.

Approved to operate as supersedeas from the filing thereof.

THOS. M. REED,  
Judge.

Copy received February 14, 1925.

LESTER O. GORE,  
Asst. U. S. Attorney. [163]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,  
Defendant.

### WRIT OF ERROR.

The President of the United States, to the Honorable THOMAS M. REED, Judge of the District Court for the District of Alaska, Division Number One at Juneau, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in said District Court before you, between the United States of America and Booth Fisheries Company, a corporation, manifest error hath happened to the great prejudice and damage of the defendant,

Booth Fisheries Company, a corporation, as is stated and appears in the petition herein.

We, being willing that error, if any hath happened, should be duly corrected and full and speedy justice be done to the parties in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly you send the record and the proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, together with this writ, so that you have the same before the Court on or before thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the Circuit Court of Appeals may cause [164] further to be done therein to correct those errors what of right and according to the laws and customs of the United States ought to be done or should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, and the seal of the District Court of Alaska, Division Number One, affixed at Juneau this 14th day of February, 1925.

[Seal]

JOHN H. DUNN,  
Clerk.

Allowed:

THOS. M. REED,  
Judge.

Copy received and service admitted this February 14th, 1925.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 14, 1925. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [165]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

#### CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America,  
to A. G. Shoup, United States Attorney for  
the First Division, District of Alaska,  
GREETING:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be holden in the  
city of San Francisco, State of California, within  
thirty days from the date of this writ, pursuant to  
a writ of error filed in the District Court for the  
District of Alaska, Division No. One, at Juneau,  
Alaska, wherein the Booth Fisheries Company is  
plaintiff in error, and the United States is defend-



ant in error, then and there to show cause, if any there be, why the said judgment in said case, and in said writ of error mentioned should not be corrected and speedy justice done in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 14th day of February, 1925.

THOS. M. REED,  
Judge.

Service of foregoing citation admitted this 14th day of February, 1925.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska, First Division. Feb. 14, 1925. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy.

Entered Court Journal No. 1, pages 349 350.  
[166]

\_\_\_\_\_

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Nos. 1749-B and 1778-B.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Defendant.

## PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the District Court, Juneau, Alaska.

You will please make up a transcript of the record in the above-entitled cause, and include therein the following papers, to wit:

1. Information in cause No. 1749-B.
2. Information in cause No. 1778-B.
3. Order consolidating actions No. 1749-B and 1778-B for trial.
4. Bill of exceptions.
5. Verdict.
6. Motion for new trial.
7. Order overruling motion for new trial.
8. Judgment.
9. Assignments of error.
10. Petition for writ of error.
11. Order allowing writ of error.
12. Bond on writ of error.
13. Writ of error.
14. Citation on writ of error.
15. This praecipe.
16. Exhibits 1, 2 and 3 introduced upon the trial by plaintiff. [167]
17. Order directing transmission of original exhibits.

—said transcript to be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit; and please forward the same to the Clerk of the said Circuit Court of Appeals for the Ninth Circuit in accordance with said rules.

Dated at Juneau, Alaska, February 14th, 1925.

H. L. FAULKNER,

Attorney for Defendant.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 14, 1925. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [168]

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PLAINTIFF'S EXHIBIT No. 1.

NORTHWESTERN FISHERIES COMPANY

Booth Fisheries Company, Owner.

General Offices:

600 Marion Building.

Seattle, Washington.

February 16th, 1924.

Clerk of the U. S. District Court, Division No. 1,  
Juneau, Alaska. ,

Dear Sir:

We enclose herewith one copy of Annual Report for 1923 for the Northwestern Fisheries Company, for filing in your office, together with 10¢ in stamps to cover filing fee.

The original has been filed with the Secretary of the Territory.

In explanation of the fact that the Northwestern Fisheries Company has no property or liabilities, beg to advise that said Company is owned by the Booth Fisheries Company, Chicago, Illinois, and is not actively operating, but the organization of the corporation is maintained to preserve the name of the Company and its use in connection with the business of the Booth Fisheries Company.

Kindly acknowledge receipt, and oblige

Very truly yours,

P. H. McCUE,

Manager.

Enc.

Plffs. Exhibit No. 1. Received in Evidence Dec. 9, 1924, in Cause No. 1749 and 1778-B. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [169]

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In the District Court for the District of Alaska,  
Division No. 1, at Juneau.

United States of America,  
District of Alaska,  
Division No. 1,—ss.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 169 pages of typewritten matter, numbered from 1 to 169, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorney for defendant and plaintiff in error, on file herein and made a part hereof, in cause No. 1749-B and 1778-B, wherein the United States of America is plaintiff and defendant in error and Booth Fisheries Company, a corporation, is defendant and plaintiff in error, as the same appears of record and on file in my office.

I further certify that the said record is by virtue of a writ of error and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Seventy-three and 65/100 Dollars (\$73.65), has been paid me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 18th day of February, 1925. ,

[Seal]

JOHN H. DUNN,

Clerk.

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Deputy. [170]

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[Endorsed]: No. 4504. United States Circuit Court of Appeals for the Ninth Circuit. Booth Fisheries Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Division Number One.

Filed February 24, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

Nos. 1749-B and 1778-B.

BOOTH FISHERIES COMPANY, a Corpora-  
tion,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

STIPULATION AND ORDER OMITTING  
ORIGINAL EXHIBITS FROM PRINTED  
TRANSCRIPT OF RECORD.

It is hereby stipulated by and between the parties hereto that the Clerk of the Appellate Court need not print nor have reproduced the original exhibits, being Plaintiff's Exhibits Nos. 2 and 3, sent up with the record, but that such exhibits shall be used and considered by the Court upon the hearing the same as if printed.

This stipulation is made subject to the approval of the Court, and dated this 14th day of February, 1925.

H. L. FAULKNER,

Attorney for Plaintiff in Error.

A. G. SHOUP,

Attorney for Defendant in Error.

San Francisco, California, Feb. 25, 1925.

So ordered.

FRANK H. RUDKIN,  
United States Circuit Judge.

Filed in the District Court, Territory of Alaska,  
First Division. Feb. 14, 1925. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy.

[Endorsed]: No. 4504. United States Circuit  
Court of Appeals for the Ninth Circuit. Filed  
Feb. 25, 1925. F. D. Monckton, Clerk.

